S. Hrg. 101-194 Pt. 2B

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE

UNITED STATES SENATE

ONE HUNDRED FIRST SESSION

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FOR HIGH CRIMES AND MISDEMEANORS

JULY 27 THROUGH AUGUST 22, 1989
EVIDENTIARY HEARINGS

Part 2B of 3 Parts

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IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, JULY 27, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:45 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, and Gekas.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Lewis Myers, Jr., counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; Bruce McBarnette, counsel, Senate Impeachment Trial Committee; Michael Rosier, counsel for Williams A. Borders, Jr.; and Marvin Arrington, counsel for William A. Borders, Jr.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

At this time, we'll continue with the respondent's case. Would respondent call their next witness?

Mr. ANDERSON. Respondent calls Judge Henry Latimer.

The CHAIRMAN. Would you raise your right hand, please? Do you, Henry Latimer, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LATIMER. I do.

The CHAIRMAN. Please be seated.

Mr. ANDERSON. Good morning, Your Honor. Would you tell the committee who you are, please?

TESTIMONY OF JUDGE HENRY LATIMER

DIRECT EXAMINATION

Mr. LATIMER. My name is Henry Latimer.

Mr. ANDERSON. And what is your present position?

Mr. LATIMER. I'm presently a practicing attorney in Miami and Fort Lauderdale.

Mr. ANDERSON. And prior to that, what was your position?

Mr. LATIMER. Prior to that, I was a circuit judge in Broward County, Florida.

Mr. ANDERSON. And the Circuit Court in Florida, is that the court of general jurisdiction?

Mr. LATIMER. Yes, sir, it is.

Mr. ANDERSON. Judge Latimer, do you know Alcee Hastings?

Mr. LATIMER. Yes, sir, I do.

Mr. ANDERSON. When did you meet him?

Mr. LATIMER. I met Judge Hastings in 1962, 1963, when I was an undergraduate student at Florida A&M University. Judge Hastings was in the law school. I eventually enrolled in Florida A&M University Law School myself, and we were classmates at least for a portion of the time that Judge Hastings was there before he graduated.

Mr. ANDERSON. And subsequent to meeting him, when you graduated from law school, where did you go into practice?

Mr. LATIMER. I graduated from law school some years later from the University of Miami, and by that time Judge Hastings was a practicing attorney in Fort Lauderdale. And I had pretty much known him, you know, while he was a practicing attorney. And when I became an attorney, we were more or less working in the same area as practicing attorneys.

Mr. ANDERSON. And have you both remained close professionally and socially throughout that period?

Mr. LATIMER. Yes, sir. That would be correct.

Mr. ANDERSON. Now, do you know Hemphill Pride?

Mr. LATIMER. Yes, sir. I know Hemphill Pride.

Mr. ANDERSON. Where did you meet him?

Mr. LATIMER. I met Hemphill Pride during the same time I was at Florida A&M University, and Judge Hastings and Mr. Pride were students at the law school there.

Mr. ANDERSON. Have you over the years maintained your relationship with Mr. Pride?

Mr. LATIMER. No, sir, I have not.

Mr. ANDERSON. And do you know or did you know Bill Borders?

Mr. LATIMER. Yes, sir. I know Bill Borders.

Mr. ANDERSON. When did you meet him?

Mr. LATIMER. I met Bill Borders, I would say the mid to the late 1970's as a result of my participation and Mr. Borders' participation in the National Bar Association.

Mr. ANDERSON. Now, Judge Latimer, let me go back through taking these people. Based upon your knowledge of Judge Hastings for more than 20 years, have you had opportunities to observe him both as a lawyer and as a judge?

Mr. LATIMER. Yes, sir, I have.

Mr. ANDERSON. And based on your observations, have you formed an opinion as to Alcee L. Hastings' truthfulness?

Mr. LATIMER. Yes, sir. Over that 20-year period, I have always known Judge Hastings prior to becoming a judge, and even after becoming a judge, as being a person who always spoke whatever was on his mind, usually in the sense of the rights of people, grass-roots-type people, unpopular causes. And when Judge Hastings has spoken before and after becoming a judge, he has never left any doubt in anyone's mind as to what his position was. And I have never known of any instance where I would have reason to believe that he was less than truthful.

Mr. ANDERSON. You have also, I take it, socially and professionally observed Judge Hastings with respect to his desires and views on the importance of money as compared to other matters. Would you share your opinion on those questions with the committee?

Mr. LATIMER. During the entire time I've known Judge Hastings, going back to 1962, he has never been a person who was motivated by money, and he certainly has not been a person in my opinion who has accumulated any money over the years. In my opinion, he has always lived a modest life style right down to the type of automobiles he's always driven, the types of homes or residences, and the types of recreational or entertainment activities he's participated in. And he has never come across as being a person who was after money or out to accumulate wealth.

In fact, I recall that when he first became a State court judge, reading about and knowing about some of the comments he made after having become a judge is that if he had received payment from all of the clients he had represented over the years, he could probably retire. Because for all practical purposes, I would say that in his practice at least 50 percent of his work was pro bono-type work.

Mr. ANDERSON. Judge Latimer, have you had a chance to observe Judge Hastings during the period in which he has served as a State court judge and a Federal court judge?

Mr. LATIMER. Well, as a State court judge, he and I served concurrently. I was in the civil division, and Judge Hastings was in the juvenile division. So to the extent that there was very little interaction between us in those respective divisions, we did serve concurrently at the time, and I had the benefit of knowing about his work, I mean just by virtue of being on the same bench with him.

Since becoming a Federal judge, I had one or two cases in his division, and in neither of those instances, with the exception of one, have I had the occasion to appear before him, because largely in the southern district all paperwork and pleadings are done by—you argue your motions in writing as opposed to personal appearances.

Mr. ANDERSON. Well, let me shift. During the period you served on the State court bench with Judge Hastings, what was his reputation as a judge among his colleagues and practitioners who appeared before him, if you know?

Mr. LATIMER. His reputation was good, is that he was a person who did not make spontaneous decisions, that they were well thought out, that he was very, very concerned about the interests

of all parties involved, and especially true in the juvenile division where children's rights and looking after them was at stake, that he was very, very conscientious about that.

And one of the other things that comes to mind about his service on the juvenile bench is the fact that, to a large extent, some judges considered juvenile bench service somewhat demeaning. And Judge Hastings gracefully accepted that assignment, and he said that, "If anyone thinks that this is a demeaning job, that they will know otherwise because I'm going to take the job and make something out of it." And as a result of that, he was very, very instrumental in getting the administrative body, HRS, to be more concerned and sensitized to what was happening in juvenile court.

Mr. ANDERSON. And by HRS, you mean the Florida Department of Health and Rehabilitative Services?

Mr. LATIMER. Yes, sir.

Mr. ANDERSON. And that's the State agency that is responsible for juveniles who get into one form of trouble or another?

Mr. LATIMER. That's correct.

Mr. ANDERSON. Now, Judge Latimer, the opinions you've expressed here, did you hold those opinions in 1981?

Mr. LATIMER. Yes, sir, I did.

Mr. ANDERSON. Judge Latimer, as of July 1989, have your opinions about Judge Hastings changed in any way?

Mr. LATIMER. My opinion has not changed in any way.

Mr. ANDERSON. To the extent you're familiar with his reputation for truthfulness in 1989, what is that reputation?

Mr. LATIMER. His reputation is one of truthful and speaking out on issues he feels deeply concerned about, and there will never be any doubt in anyone's mind who actually listens as to what he's saying or what his position is.

Mr. ANDERSON. Now, let me turn for a moment, Judge Latimer, to your knowledge of Mr. Borders. You indicated you had met him through the activities of the National Bar Association?

Mr. LATIMER. Yes, sir.

Mr. ANDERSON. Did you become friends with Bill Borders?

Mr. LATIMER. Over the years, there was a period late 1970's to early 1980's when I served as president myself of the Florida chapter of the National Bar Association, which was an affiliate and is an affiliate of the National Bar. Bill Borders has always been extremely with the National Bar Association, so necessarily there would have to be some communication between the two chapters, particularly at conventions. And as a result of my function as president of the Florida chapter and Bill being somewhat on the Board of Directors and later the president of the National Bar, we formed a social and professional relationship limited to those areas.

Mr. ANDERSON. During the period of the Carter administration, did you have knowledge of the roles Mr. Borders was playing?

Mr. LATIMER. No specific knowledge, except to say that I had reason to believe that Mr. Borders was considered a person who had access to at least some of the people in higher positions with the Carter administration.

Mr. ANDERSON. And was that your belief back in the period 1978 to 1981?

Mr. LATIMER. Yes, sir. That's correct.

Mr. ANDERSON. Did you ever have occasion to visit Mr. Borders in Washington?

Mr. LATIMER. Yes, sir, I did. It would have been about that period. I don't recall if it was 1980 or 1981, or 1979, for that matter. But I received an invitation to visit the White House for the purpose of attending a press conference to be put on by then President Carter, and that special invitation I'm sure was give to me as a result of Bill Borders' efforts.

Mr. ANDERSON. When you went to Washington, did you see Bill Borders on that occasion?

Mr. LATIMER. Yes, sir. I did.

Mr. ANDERSON. Where did you see him?

Mr. LATIMER. He picked me up at the airport and later picked me up from the hotel to take me to the White House.

Mr. ANDERSON. And did Bill Borders ever visit you in Florida?

Mr. LATIMER. Yes, sir, he did.

Mr. ANDERSON. And on those occasions, have you ever picked Mr. Borders up at the airport?

Mr. LATIMER. My recollection about Bill's trips to south Florida, as I understood it, he had family members or relatives who lived somewhere in the Fort Pierce area. And it was not unusual for him to come down and call me from various spots, either just to say hello, and I believe at least on no less than one occasion he did ask me if I would pick him up from the airport.

Mr. ANDERSON. And did you do so?

Mr. LATIMER. Yes, sir, I did so.

Mr. ANDERSON. Did you converse with Mr. Borders on the telephone on a fairly regular basis?

Mr. LATIMER. I would not say on a regular basis, but sporadically, he would call me, not to discuss anything particular, not anything in particular, or except maybe something relating to the bar association. But those calls were normally unexpected.

Mr. ANDERSON. Now, Judge Latimer, over the course of your time in the National Bar Association, both in the State of Florida and elsewhere, have there been occasions when black lawyers or members have gotten into one form or trouble or another?

Mr. LATIMER. Yes, sir.

Mr. ANDERSON. And is there a pattern that you have discerned and perhaps participated in as to the National Bar Association's response to circumstances such as that?

Mr. LATIMER. The National Bar Association, and more specifically the one that I'm most familiar with is the situation in Florida, and I think it's fair to say that all black lawyers for the most part know each other in Florida, and it's certainly true that all black judges know all black judges. And most black lawyers know all black judges. So to that extent, it's a pretty well-knit organization where the communication is completely open. And it's not even official because it happens all the time. And that is that whenever a member is in trouble, for whatever reason, that information becomes known to the general membership, and without having to ask, solicit, or otherwise, it's usually a matter of trying to do whatever is necessary to give assistance to the person who may be facing some kind of disciplinary problem.

Mr. ANDERSON. And during your period in the National Bar Association or otherwise, did you become aware that Hemphill Pride had gotten into trouble in the mid-1970's?

Mr. LATIMER. That was during the time, Mr. Anderson, before I was a lawyer, I believe. The only reference I have to Hemphill Pride was in the late 1970's—and I believe his troubles had begun long before then because I was not admitted to the bar until 1973. But I learned casually, even in the late 1970's, of Mr. Pride's problem with some matters he had handled up in South Carolina.

Mr. ANDERSON. Now, Judge Latimer, prior to October 9, 1981, what was your opinion or your understanding of William Borders' reputation?

Mr. LATIMER. My understanding of Mr. Borders' reputation prior to 1981 is that he was a person with a lot of influence in the National Bar Association, that he was a well-respected, well-known lawyer in the Washington, DC area, and that he was a person who, based on his prior actions and support of the administration of President Carter, that he was pretty much very, very well politically connected.

Mr. ANDERSON. Has your opinion of Mr. Borders changed since October 9, 1981?

Mr. LATIMER. My opinion has not changed at all, sir.

Mr. ANDERSON. With respect to Judge Hastings, if you were—let me go back to that last question. What is your opinion today of William Borders?

Mr. LATIMER. My opinion of Bill Borders is that I have not seen him nor had any conversations of any kind of extensive nature subsequent to that time. And for that reason, I have no reason to believe that he's any different than he was before. Naturally, I'm familiar with what he's involved in through the newspaper articles and the accounts of that, but my opinion of Bill Borders, as it existed prior to 1981, has not changed.

Mr. ANDERSON. Judge Latimer, if Judge Hastings appeared in your court, your prior court, and testified under oath, would you have any reason to doubt his testimony on any point?

Mr. LATIMER. No, sir.

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Is there cross examination?

CROSS EXAMINATION

Mr. BRYANT. Judge Latimer, my name is John Bryant. I'm a Congressman from Texas, and I'm the lead manager of the House's case prosecuting Judge Hastings.

Mr. LATIMER. How are you doing, Mr. Bryant?

Mr. BRYANT. Fine. Thank you.

You were a judge in which county?

Mr. LATIMER. Broward County, which is the Seventeenth Judicial Circuit, Fort Lauderdale.

Mr. BRYANT. Did you choose not to seek re-election?

Mr. LATIMER. No, sir.

Mr. BRYANT. How did you cease being a judge?

Mr. LATIMER. I resigned from the bench.

Mr. BRYANT. Judge Latimer, you testified a moment ago that you knew Mr. Borders; is that correct?

Mr. LATIMER. Yes, sir.

Mr. BRYANT. Did William Borders ever ask you to leave your office and go out to a pay phone and call him back?

Mr. LATIMER. Oh, no, sir, he didn't. No.

Mr. BRYANT. Have you ever had plans to have dinner with Mr. Borders?

Mr. LATIMER. No, sir, I haven't.

Mr. BRYANT. Judge Latimer, you testified a moment ago that some of the members, or maybe all of them—I wasn't sure—in the National Bar Association, when another lawyer who is a member is in trouble, just sort of naturally get together and attempt to help him out of the situation that he's in. Did the group that you're referring to support William Borders in his trial when he was tried for conspiring with Judge Hastings to obtain a bribe?

Mr. LATIMER. OK. What I would do is slightly respond to your question by stating that my testimony was not that the National Bar Association did that, but the Florida chapter I have specific knowledge of, that being the affiliate chapter. I cannot testify one way or the other about the national organization, but the Florida chapter, I can give you information on that. And the answer is no, the Florida chapter did not go on record as being supportive of Bill Borders because he was not a member of the Florida chapter.

Mr. BRYANT. Well, I was talking, I guess, not so much about going on record as I was about the other types of support that you were referring to earlier.

Mr. LATIMER. I'm not familiar with any that the Florida chapter might have—any action the Florida chapter might have taken one way or the other with respect to Bill Borders.

Mr. BRYANT. If the Florida chapter does go on record in support of a defendant in a case, does that then cause the members of that chapter to be willing to testify on behalf of the defendant in a case?

Mr. LATIMER. Well, I can only speak for myself. You know, I'm here as a result of having received a subpoena, and I'm here for that reason, and I have no reason to say that any other member would not show up if they were subpoenaed. But by the same token, I'm not familiar with anyone calling in, volunteering to come before this committee to testify.

Mr. BRYANT. Well, just two more questions, Judge. If any judge, Judge Hastings or anyone else, whether in the Federal or the State system, was found to have conspired to obtain a bribe from defendants appearing in a case that was pending before him, wouldn't you agree that such a judge is unfit to hold public office?

Mr. LATIMER. Well, that's not for my determination because, you know, I think one of the reasons that we're here today on these hearings is to try to gather facts. And for me to even begin to give you such an opinion, you know, based on newspaper accounts and information that I'm not privy to I think would be totally irresponsible to come up with any such opinion as that.

Mr. BRYANT. You expressed a very high opinion of Judge Hastings earlier; is that correct?

Mr. LATIMER. Well, I responded to a question, and I'll be happy to respond to any question you would ask me regarding my knowl-

edge of Judge Hastings, my feelings about what I've observed from his behavior. I'll be happy to give you that. But I'm not volunteering an opinion of Judge Hastings, and I'll be happy to answer any questions you might have about him.

Mr. BRYANT. Well, I was just setting up another question.

Mr. LATIMER. OK.

Mr. BRYANT. I think it's correct that you had testified that you have a very high opinion of Judge Hastings just a few moments ago; isn't that correct?

Mr. LATIMER. I testified that in my opinion he is a truthful person and that I would have no reason to disbelieve him under oath, and that he's always been a person I've observed who spoke up for the rights of people who otherwise could not speak for themselves, that his practice was 50 percent *pro bono,* and that he never was a person in my opinion who was out to be a money-accumulating kind of person.

Mr. BRYANT. But your opinion of him was formed on the basis not of knowledge of the facts in this case but on the basis of maybe what you saw in the paper as well as having known him for many years; is that correct?

Mr. LATIMER. Well, I would eliminate what I've seen in the paper, but based on the fact that I've known him over the years, yes.

Mr. BRYANT. I'm just trying to get the simple point. You're not familiar with the facts in this case beyond what was in the newspapers?

Mr. LATIMER. That's correct.

Mr. BRYANT. Thank you. That's all. Thank you very much.

The CHAIRMAN. Is there redirect?

REDIRECT EXAMINATION

Mr. ANDERSON. Back in 1981, Judge Latimer, did the south Florida chapter of the NBA take a position on Judge Alcee Hastings?

Mr. LATIMER. No more than what normally would have done with any lawyer. That is, Judge Hastings has been indicted or has a trial coming up; those of you who are so inclined to lend support to his efforts after investigation, do so. Was there a resolution passed? I feel pretty sure there was not. Was a position taken where the organization itself would be 100 percent behind Judge Hastings? The answer is not. It was a matter of the information being shared with the membership for those who felt so inclined to lend whatever support they thought were necessary or that they were in a position to render.

Mr. ANDERSON. But those discussions were held in the——

Mr. LATIMER. At meetings, right.

Mr. ANDERSON. And did many of the members indicate that they wished to help and assist Judge Hastings in any way they could?

Mr. LATIMER. Yes, sir.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Is there any recross?

Mr. BRYANT. No.

The CHAIRMAN. Are there questions from the committee? Senator Specter?

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Judge Latimer, you've testified that Judge Hastings contributed about 50 percent of his effort to *pro bono* public service work. Could you amplify that a bit?

Mr. LATIMER. I think to leave it at that would be probably a mischaracterization. What I mean about that is, generally speaking, any time a case comes into a lawyer's office—and, unfortunately, this is the way things happen to be, particularly in the late 1960's and the early 1970's—is that when people can't afford a lawyer, you will take on a case with expectation of being paid, but, in fact, never get paid. So I don't mean to say that Judge Hastings was out soliciting *pro bono*-type work, but I'm saying that the clients he normally represented ended up without the ability to pay him. And as a result of that, he never got paid.

The VICE CHAIRMAN. Well, did he take on cases, to your knowledge, of the generally classified category of *pro bono* work where they were——

Mr. LATIMER. No, sir. I know of——

The VICE CHAIRMAN [continuing]. Public interest matters?

Mr. LATIMER. I don't know of any such cases as that. I do know that for a period of time that he was general counsel for the local NAACP, and I know that much of that work was unpaid-for time. I don't know of any details of what arrangements he might have had with them, but I know just generally speaking that whenever you work for the NAACP, particularly at the local level, it's work where you're not being paid.

The VICE CHAIRMAN. Judge Latimer, you testified on direct that there is this network of black lawyers and judges who help one another, and understandably so.

Mr. LATIMER. Right.

The VICE CHAIRMAN. And then on redirect, Professor Anderson asked you a question about whether there was an effort to help Judge Hastings specifically. And my question to you: Did you or, to your knowledge, any of the others ever consider going to Mr. Borders and saying to him, "You've been convicted, you served your time, and if it is false that Judge Hastings was involved, that you ought to go forward and say so"?

Mr. LATIMER. I don't know of any efforts or any such conversations or even any discussions of anyone that might have taken that approach, sir.

The VICE CHAIRMAN. Well, the question in my mind—and this is speculative, but I will pose it to see if you care to answer it—is: In this context, where there are these associations, and you've testified about the high regard that Judge Hastings was held, and he was a member of the south Florida Bar. And you know Mr. Borders fairly well, as you've testified; not intimately, but he picked you up at the airport, and you picked him up at the airport. And others have known Mr. Borders, and now Judge Hastings is in this situation with this impeachment process, and he faced a trial earlier. But at least at this stage, Mr. Borders has been tried, convicted, and has served his time. And if there is some underlying feeling that Mr. Borders was rainmaking and was making representations

which, in fact, were not true, then if he were to come forward on a voluntary basis and say so, that it could obviously have a very significant, perhaps decisive, impact in this case. Perhaps not, but perhaps so.

Why wouldn't people who know Judge Hastings and know Bill Borders say to Mr. Borders, "Look, you served your time; tell the truth, help out Judge Hastings if it's true that he was not involved"?

Mr. LATIMER. You know, Senator, I cannot answer that question. I just can't. You know, anything I—I can't even begin to speculate on that, except to say that I have a reason to believe that Mr. Borders, as well as anyone else who reads the newspapers, is not unfamiliar with the proposition that you've just raised. And why he hasn't come forward, I just can't begin to say on that.

The VICE CHAIRMAN. Well, it's not a fact question, just a couple of lawyers musing out loud, really, as to what's going on in the back of the mind. But I ask it because you do know Mr. Borders, you do know Judge Hastings, and if there's a sense that Judge Hastings is being unfairly treated and Mr. Borders really could exonerate him, the question comes to my mind, Why not? But you've answered it as best you can, and I don't propose to push it beyond that point.

A couple more very short matters. We're trying to limit our time here to 5 minutes to move on with this process. You've testified that you had a good opinion of Mr. Borders and that continues to the present time. And Mr. Anderson asked you a question that if Judge Hastings appeared in your courtroom, would you have any reason to doubt the veracity of his testimony, and I would ask you the converse of that. If Mr. Borders appeared in your courtroom, would you have any reason, based on what you said, about the veracity of his testimony?

Mr. LATIMER. In the proper context—well, I'll tell you one area I would probably receive with some grain of salt, and that would be any representation that Mr. Borders might make about political connections, I would examine that very, very carefully. And on the other hand, as to testimony regarding specific facts, I would not have any reason to doubt any of that.

The VICE CHAIRMAN. Well, why would you doubt his representations as to political connections if he was to say that his political connections were of a factual nature; that is, I know Mr. X or Commissioner Y or Judge Hastings. Would you put a representation—strike the former question and let me get right to the heart of it.

Would you put a representation as to knowing Judge Hastings and being able to influence Judge Hastings in the category of what you termed a political connection?

Mr. LATIMER. Oh, yes, sir, I would.

The VICE CHAIRMAN. So you would doubt Mr. Borders on statements that he could influence Judge Hastings?

Mr. LATIMER. I would doubt any such statement as that. I absolutely would.

The VICE CHAIRMAN. Well, why?

Mr. LATIMER. But I'll take it to a further context, and that is, it's not unusual—I mean, just by virtue of being a lawyer and certainly by being a judge, that occasionally, you know, you will get people

who will try to trade off of other persons' names. And this is not limited to Bill Borders. And any time I would get any kind of representation from anyone that they could perhaps influence somebody else, I would not take that at face value without carefully examining it, looking at it very, very carefully. And, you know, that's the reason I would limit my evaluation of Bill in the respect of his having any kind of connection with persons of a political nature, where perhaps there could be some suggestion that he had influence over them.

The VICE CHAIRMAN. Of course, it's one thing to say "I know Judge Hastings, and I can put in a good word for you"; it's something entirely different to say, "If you pay me $150,000, I can fix the case before Judge Hastings."

Mr. LATIMER. Those two are different, but generally speaking, if anyone were to make that kind of comment to me on the road, I would still take it with a grain of salt. I mean, even if it were something as you suggested, "I can put in a good word for you," I mean, even that—I mean, that's usually puffing. That's been my experience.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Are there other questions from the committee? Senator Lieberman—oh, Senator Bryan.

Senator BRYAN. Judge, I thought I understood your testimony to be that you still held the same opinion today of Mr. Borders that you did prior to 1981. Did I understand your testimony correctly?

Mr. LATIMER. Yes, sir.

Senator BRYAN. May I take it from that the fact that Mr. Borders has been indicted and convicted of a conspiracy to bribe a Federal judge that that does not change your opinion of him at all?

Mr. LATIMER. Well, maybe I didn't—let me clarify what——

Senator BRYAN. I want to make sure I understand your testimony.

Mr. LATIMER. OK. The question was: In what context did I know Bill Borders prior to 1981? And my response was that I knew Bill Borders as being a person who was very active with the National Bar Association, number one; number two, that a person who had a reputation of being politically well connected and a person who had some degree of prominence, at least by virtue of his reputation in the Washington, DC area. That was, you know, what I understood Bill Borders to be prior to 1981.

And since that time, I have not had any reason or chance to communicate with him or even to investigate it outside of newspaper accounts. So the last opinion I had of him was just prior to 1981, and I have no reason to know that anything has changed except for the fact that he has been indicted and served time in jail.

Senator BRYAN. Wouldn't you agree, Judge, that for anyone, a lawyer in particular, an officer of the court, to be convicted of conspiring to bribe a judge is an extraordinarily serious offense?

Mr. LATIMER. I think it's very serious, extremely serious.

Senator BRYAN. It certainly would relate to an individual's character, would it not?

Mr. LATIMER. Yes, sir, it would.

Senator BRYAN. Wouldn't it be very hard to consider that person in the same light after such a conviction that you thought of that

person before in terms of his character, his reputation, certainly his truthfulness?

Mr. LATIMER. Well, no one has asked me about truthfulness. I mean, no one has asked that question, and I think there's a miscommunication again, and I want to try to clarify this.

I had an opinion of Bill just prior to 1981 which I've stated. Since that time, outside of his trial, the charges, the conviction, the service of jail time, I have not had any reason to communicate with Bill, to see him, or any of that. Whether or not the DC area now looks upon Bill Borders differently than it did prior to 1981, I can't say. I don't live in the area.

Senator BRYAN. But you do not, I take it?

Mr. LATIMER. Oh, absolutely not. I mean, that's correct. I mean, absolutely it's totally different with me now, but that determination is based primarily on what has happened as a result of it, and that for conspiring to bribe a Federal judge, serving time in jail. Naturally, I mean, those things change. Whether or not he is still active with the bar association, my answer is no. He is not because of that break of time when he went to jail and everything else. But nothing has come to my attention that would have told me that prior to 1981 Bill Borders was not a well-respected lawyer in the Washington, DC area prior to all of this.

Senator BRYAN. You offered a very tantalizing proposition. You said nobody has asked you about his truthfulness or reputation for truthfulness.

Mr. LATIMER. Right.

Senator BRYAN. Do you want to comment on that?

Mr. LATIMER. I would comment on it just based on the fact of what has happened as a result of his trial, what has happened as a result of his refusal to come before this committee. My understanding has been that he has refused to testify. And given all of those things, the fact that he was convicted, did serve time in jail, hasn't come here to express his testimony as to what happened—all of those things now would cause me to seriously wonder and raise serious questions about his truthfulness.

Senator BRYAN. Thank you very much, Judge.

The CHAIRMAN. Senator Lieberman.

Senator LIEBERMAN. Judge, good morning.

Mr. LATIMER. Good morning.

Senator LIEBERMAN. Do you know Hemphill Pride?

Mr. LATIMER. I know Hemphill Pride, yes, sir.

Senator LIEBERMAN. How do you know Hemphill Pride?

Mr. LATIMER. I know him from 1962, 1963 when he was also a student at the law school with Judge Hastings.

Senator LIEBERMAN. And you're familiar with the problems he had in South Carolina that led to his incarceration?

Mr. LATIMER. No, sir, I'm not.

Senator LIEBERMAN. Are you aware of the fact that he was incarcerated for a period of time?

Mr. LATIMER. I am aware of that.

Senator LIEBERMAN. That's all I meant.

Mr. LATIMER. OK.

Senator LIEBERMAN. Do you recall any time during 1980 or 1981 or any time, really, when Judge Hastings asked you to either write

letters to people in South Carolina on Hemphill Pride's behalf or contribute some money to a fund to help his family?

Mr. LATIMER. No, sir. I'm not familiar with that.

Senator LIEBERMAN. It never was asked by Judge Hastings to do anything of that——

Mr. LATIMER. Not me, no.

Senator LIEBERMAN. Okay. Understood.

I believe you've indicated that you have been active in the National Bar Association.

Mr. LATIMER. Yes, sir.

Senator LIEBERMAN. And I presume that during 1981, which was the year when some of the events that we're concerned with happened, that you would have been involved in the National Bar Association generally?

Mr. LATIMER. Generally speaking, that would be correct.

Senator LIEBERMAN. From what I've come to learn about the association, it has two basic divisions. I assume because you're on the bench that you would have been involved in the Judicial Council part of the NBA.

Mr. LATIMER. That's correct. Right.

Senator LIEBERMAN. Along with Judge Hastings. In other words, Judge Hastings would have been involved there as well during that time.

Do you remember, can you describe from your own experience the level of Judge Hastings' involvement in the NBA during 1981, to the best of your recollection? Was he involved in the activities of the association?

Mr. LATIMER. I have no specific recollection of Judge Hastings being involved with the Judicial Council, and that is the arm of the NBA which is somewhat the second division from the general membership. This is not to say, I mean, he wasn't involved, but I have no specific recollection of ever attending a Judicial Council meeting when Judge Hastings was present.

Senator LIEBERMAN. And did you attend the Judicial Council meetings frequently?

Mr. LATIMER. Well, frequently, just so you will understand, the National Bar Association normally will hold two meetings per year. So frequently in that sense——

Senator LIEBERMAN. Understood.

Mr. LATIMER [continuing]. That I would normally attend one per year.

Senator LIEBERMAN. One of the two.

Mr. LATIMER. One of the two, right. On an annual basis.

Senator LIEBERMAN. And you don't remember seeing Judge Hastings at those Judicial Council meetings?

Mr. LATIMER. I have no specific recollection, again, of seeing him present at those meetings. At least for the years I attended.

Senator LIEBERMAN. Yes.

Mr. LATIMER. Right.

Senator LIEBERMAN. Is it your general recollection that he has been involved in the National Bar Association—Judge Hastings?

Mr. LATIMER. Yes, sir.

Senator LIEBERMAN. But you didn't see him at the meetings that you attended?

Mr. LATIMER. Well, let me explain it this way.

Senator LIEBERMAN. Yes, please.

Mr. LATIMER. Because the time period I'm talking about would be the time period when I became an active member, which was probably 1975.

Senator LIEBERMAN. OK.

Mr. LATIMER. Extending through the present time.

Senator LIEBERMAN. Right.

Mr. LATIMER. And the National Bar Association will only meet annually. There is also a mid-year meeting, and the meetings are always held in different parts of the country.

Now, when the meetings occur, there will be anywhere from two to five thousand lawyers who will appear with their families, and naturally not only is a time to attend seminars and to sharpen your legal skills as a result of that, but it's also a time of meeting friends, a social gathering, when many of the lawyers and the judges will bring their families or children, and social gathering as well. So it could very well be that I could be at a convention or a meeting and not see Judge Hastings.

Senator LIEBERMAN. OK.

Mr. LATIMER. Because of that kind of intermingling and mixing with various people.

Senator LIEBERMAN. Right. So he may have been there.

Mr. LATIMER. Yes, sir.

Senator LIEBERMAN. Even though you don't have a specific recollection——

Mr. LATIMER. That's correct.

Senator LIEBERMAN [continuing]. Of having seen him?

Mr. LATIMER. Right.

Senator LIEBERMAN. During 1981, I believe Bill Borders was the president of the National Bar Association. I believe we've heard testimony on that. I don't need to ask you about that, but as a member of the Judicial Council section of NBA, would it be your recollection that Bill Borders as president would have had regular interaction with those judges who were active in the Judicial Council section of the NBA?

Mr. LATIMER. My recollection and my evaluation would be the complete opposite.

Senator LIEBERMAN. Yes?

Mr. LATIMER. And the reason I would say that is because even though the Judicial Council is an arm of the National Bar Association, the judges normally prided themselves of being somewhat autonomous—autonomous in the sense that we normally set our own agenda, allowed the primary organization who was responsible for putting the program together to receive our agenda, have them provide us with space, and we would even have separate social functions. And the only time the two bodies would come together would be for the general assembly where there would be no reason for one to be designated Judicial Council or just attorney, because the general assembly was usually just a program for everyone.

So the converse would be true. The converse would be true is that the election process for president also was accompanied by another process, and that was electing the chairman of the Judicial Council. And at these conventions, those are the two areas that a

lot of time is spent on saying who the candidates are and efforts being made to elect the respective positions, that being chairman, Judicial Council, and president. And once the chairman is elected, for all practical purposes, the Judicial Council would be more or less limited to the membership in that organization.

Senator LIEBERMAN. OK. Thank you. Thank you, Judge. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. If not, is there any reason this witness cannot be excused?

The VICE CHAIRMAN. Mr. Chairman, I would like one more question.

The CHAIRMAN. Yes. Senator Specter.

The VICE CHAIRMAN. And it is this: Would you believe Mr. Borders if he appeared today and said that Judge Hastings did not agree to take a bribe on a specific case for $150,000?

Mr. LATIMER. I would have to question any statement Mr. Borders made today and put it under very, very careful scrutiny. And that is whether he made a statement that would exonerate Judge Hastings or implicated him. It would not be something that I would take at face value. I would like very much to have an opportunity of questioning him regarding his foundation for that, and most certainly his motivation for doing it now when it wasn't done six, seven, eight years ago.

The VICE CHAIRMAN. Thank you. Thank you very much, Judge Latimer.

The CHAIRMAN. Are there any other questions from the committee?

[No response.]

The CHAIRMAN. If not, this witness will be excused. Judge Latimer, we appreciate your testimony very much.

[Witness excused.]

The CHAIRMAN. Would counsel for respondent please call his next witness?

Mr. ANDERSON. Judge Edward Rogers.

The CHAIRMAN. Please come forward. Would you raise your right hand, please? Do you, Edward Rogers, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge ROGERS. Yes, sir, I do.

The CHAIRMAN. Please be seated.

Mr. ANDERSON. Judge Rogers, would you share with the committee your full name?

TESTIMONY OF EDWARD ROGERS

DIRECT EXAMINATION

Judge ROGERS. Edward Rogers.

Mr. ANDERSON. What is your present position, sir?

Judge ROGERS. Circuit judge in and for Palm Beach County, Florida, Fifteenth Judicial Circuit.

Mr. ANDERSON. Now, am I correct that running from south to north is Dade County, which is Miami, and Broward County, which is Fort Lauderdale, and Palm Beach County, which is Palm Beach?

Judge ROGERS. That is correct.

Mr. ANDERSON. And you serve in Palm Beach County?

Judge ROGERS. Yes, sir.

Mr. ANDERSON. How long have you been on the bench, Judge?

Judge ROGERS. Approximately 16 years.

Mr. ANDERSON. Do you know Alcee Hastings?

Judge ROGERS. Yes, sir, I do.

Mr. ANDERSON. When did you meet him?

Judge ROGERS. Alcee Hastings and I finished law school together at the Florida A&M University when it was in existence in 1963, so I met him around 1960, 1961.

Mr. ANDERSON. Do you know Hemphill Pride?

Judge ROGERS. Yes, sir. Hemphill Pride was also a member of that class which had only six people in it.

Mr. ANDERSON. Almost all of them have been here.

After your graduation, Judge Rogers, what did you do?

Judge ROGERS. I went back to Palm Beach County to open a law office.

Mr. ANDERSON. And did you practice continuously there until you went on the bench?

Judge ROGERS. Yes, sir. I practiced there until 1973, and I was appointed by Governor Askew to the bench.

Mr. ANDERSON. Did you maintain your professional and social relationship with Judge Hastings throughout that period?

Judge ROGERS. Yes, sir, I did.

Mr. ANDERSON. Have you done so since you went on the bench?

Judge ROGERS. Yes, sir, I have.

Mr. ANDERSON. Have you maintained communication or a relationship with Hemphill Pride over that period.

Judge ROGERS. No, sir, I have not.

Mr. ANDERSON. Were you active in the affairs of the National Bar Association?

Judge ROGERS. Sort of active. By that I mean I never held office there, but I did attend the meetings on a regular basis, money allowing it, if I had the money to go.

Mr. ANDERSON. And in connection with that, did you meet Bill Borders?

Judge ROGERS. Yes, sir, I did.

Mr. ANDERSON. Did you become friendly with him, or what was the level of your contact with Bill Borders?

Judge ROGERS. I knew Bill, I don't think as well as Judge Hastings, but I did know him and I did know that he was active in the bar association, and I did talk to him on several occasions. And I would say that I knew him. But basically my meetings with him were maybe once or twice a year at the bar functions, or should he come to a bar function in Florida, I would see him.

Mr. ANDERSON. Now, based on your observations of Judge Hastings as a lawyer and later as a judge, do you have an opinion as to his truthfulness?

Judge ROGERS. Yes, sir, I have.

Mr. ANDERSON. Would you share that with the committee and anything you think might help them in evaluating your opinion?

Judge ROGERS. Well, I think that Judge Hastings is a very truthful person. As I said in my prior testimony, he perhaps is truthful when it would be to his best interest not to be so. And I have suggested that to him on occasions. He is very plain, outspoken, and perhaps that is the reason for much of his difficulty because of his desire to say just what he feels like to friends and enemies alike. He has made many statements to black lawyers who were his constituents that held him in bad stead. So I would say that would tell the truth if it hurt.

Mr. ANDERSON. Judge Rogers, have you had an opportunity over the years to observe Judge Hastings in his public and private life and assess his views and desires with respect to financial means and money?

Judge ROGERS. Absolutely. I would say that money has never been a primary purpose for his work or anything else. I've never known him to have the trappings of success, the Rolex watch and the big car and the house on the waterfront. I've never known him to be interested in it. In fact, he has never tried to impress anybody with his affluence or his ability to make money.

I think the only thing Judge Hastings has ever really been interested in is being elected to something. Now, he would give his soul to be elected to something, and he's run for everything you could run for. But as far as impressing people with money, that has never, ever since I've known him, been one of his motivating factors.

Mr. ANDERSON. And, Judge Rogers, beyond running for things, what else motivates Alcee Hastings, in your opinion?

Judge ROGERS. Well, as I said, he is a crusader, to the lack of a better term, and whatever appears to be wrong or seems to upset him, that motivates him. He never had really a big practice. It was a solo practice. At the risk of joking, "so low," you know, that he hardly made it. And I was very happy to see him as a friend go on the bench because it gave him an opportunity maybe to try to make a little money, which I thought that he deserved. He did a lot of work, and like many of us, you know, we're talking about 1963 when you only had maybe a half a dozen lawyers in the State of Florida. And most of the work he got was civil rights work because a lot of black people felt as though black lawyers could only do civil rights work and couldn't do the negligence cases and the real estate contracts and things like that. So he was pretty much relegated to taking whatever he could get.

Mr. ANDERSON. Judge Rogers, are you familiar with Judge Hastings' reputation among lawyers and colleagues as a judge?

Judge ROGERS. Yes, sir. I think he has a very high reputation. I would say that if you took a poll of the lawyers in the State of Florida that you would find that his reputation for fairness, impartiality, would just be astounding.

Mr. ANDERSON. And, Judge Rogers, based on your own opinion and reputation, would you believe Judge Hastings if he told you something under oath?

Judge ROGERS. Yes, sir.

Mr. ANDERSON. Would you have any reservations about that?

Judge ROGERS. No, sir.

Mr. ANDERSON. Judge Rogers, have your opinions of Judge Hastings changed at all since October 9, 1981?

Judge ROGERS. As far as truthfulness is concerned, not at all. As I often joke with him, I found out that he's basically impervious to pain. I don't know how he's managed to take this all these years.

Mr. ANDERSON. I think I'll leave that one for the committee to develop.

How frequently have you had occasion over the years, or had you had occasion by 1981, to see or communicate with Hemphill Pride?

Judge ROGERS. I don't believe that I have seen Hemphill maybe—since 1981?

Mr. ANDERSON. No. Before 1981, between 1963 and 1981.

Judge ROGERS. Unless I may have seen him at one of the bar associations, I don't believe that I've had the occasion to see him or communicate with him.

Mr. ANDERSON. Based upon your observations of, let's start with Judge Hastings, have you had occasion to observe Judge Hastings' response when friends or professional colleagues got into trouble?

Judge ROGERS. In what respect?

Mr. ANDERSON. Just could be a personal family tragedy, another lawyer——

Judge ROGERS. Oh, yes.

Mr. ANDERSON [continuing]. Who got into trouble.

Judge ROGERS. Sure.

Mr. ANDERSON. What was——

Judge ROGERS. As I said in the trial at Miami, I thought that Judge Hastings and Hemphill Pride were very close friends, and I thought that when Hemphill was indicted and served time, that Judge Hastings did more than just a friend. As far as his affection for Pride was concerned, he, I know—at least he told me, he went to prison to visit Pride on several occasions. I know of my own knowledge that one summer he did bring Pride's kid home from Carolina to spend time with Hastings and his kid in Florida. I saw him and met him at that time. And Hastings did talk with me on a number of occasions about having visited Pride and how he was doing and his concern for his family. That is, Pride's family.

Mr. ANDERSON. And is Judge Hastings the kind of man in circumstances like that who would reach out without being asked?

Judge ROGERS. Oh, yeah, yeah. I think so. I don't think that you would have to ask, and if you had to ask and he had decided he wasn't going to help you, he probably wouldn't give it.

Mr. ANDERSON. Judge Rogers, I have no further questions.

The CHAIRMAN. Is there cross-examination?

CROSS EXAMINATION

Mr. BRYANT. Yes.

Judge Rogers, I'm Congressman Bryant from Texas. I'm the lead manager of the House's case against Judge Hastings.

Judge ROGERS. All right, sir.

Mr. BRYANT. I think you had previously testified that you were familiar with Judge Hastings' relationship with Hemphill Pride; is that correct?

Judge ROGERS. To that extent that I testified to, and law school, you know, associations.

Mr. BRYANT. Judge Rogers, is it not true that during 1981 Judge Hastings never came to you soliciting funds on behalf of Mr. Pride?

Judge ROGERS. I don't believe so. Actually, if he had, I would not have contributed because of the ethical involvement in it. So I think that——

Mr. BRYANT. It is not true?

Judge ROGERS. Yeah. I can't remember. No, I remember his stating that he had contributed himself, but I don't recall his ever asking me to contribute anything.

Mr. BRYANT. Even though you all were in law school together?

Judge ROGERS. Yes, sir. He and Pride were much closer than, you know, I was with Pride.

Mr. BRYANT. Judge Rogers, in your estimation, isn't it correct that prior to Judge Hastings' criminal trial, Hemphill Pride was one of Judge Hastings' closest friends? I think that's the import of what——

Judge ROGERS. Sure. Yeah. And certainly in law school. After law school, I sort of lost track, but as I said, because of the affection he showed Mr. Pride after he was arrested, I think that they still were very close.

Mr. BRYANT. Based on your knowledge of their relationship and their closeness, could you even conceive of Mr. Pride deliberately lying to hurt Judge Hastings?

Judge ROGERS. I can't conceive of it. If he did, I would be very much surprised, and I would think that he really didn't treat him right if he would do that.

Mr. BRYANT. One last question, Judge. Do you believe that if a judge, any judge, was found to have lied on the witness stand in a court proceeding after taking an oath to tell the truth that that would be ample justification for removing that judge from office?

Judge ROGERS. Well, if you'll allow me a little latitude. I believe that if we were absolutely sure of the lie. But my position is that once the jury has found that judge or anybody not guilty, then that should be the end of it, and we should not second guess whether or not what he said was a lie, because that is only in the eye of the beholder. And I think that our jury system requires that. I've had a lot of juries in which I was surprised that the jury reached the decision that it did. But my attitude to everybody was, well, that's what they've decided, they chose to believe people that I may not have believed, but nevertheless that was the end of it. And there's only been one time in my career that I attempted to second guess what a jury decided.

So with that caveat, certainly I believe that if I was sure beyond a doubt that anybody lied about something, then I think that certainly whatever they said should be discredited. I'm not going to justify lying, but in our business it's just so difficult. If we had a way that we absolutely know in every case what the truth is, then I'm sure we wouldn't be here today.

Mr. BRYANT. Well, you understand the Senate has the obligation to consider the allegation with regard to the possibility that Judge Hastings may have lied in his trial in order to obtain that acquittal? Are you aware of that?

Judge ROGERS. Yes, sir.

Mr. BRYANT. My question simply was: If a person was found to have lied in a trial, a person that was a judge, do you agree that they should be removed from the bench?

Judge ROGERS. If the Senate can find within their heart of hearts that there's no doubt in their mind that that happened, and that's their job and their task, then I think that that's their task. You asked me my opinion, and my opinion was: As a judge, even though I may have felt that happened in some cases, I have not been motivated to exchange my opinion for that of six people who paid more attention than I did.

Mr. BRYANT. Thank you very much.

The CHAIRMAN. Is there redirect examination?

REDIRECT EXAMINATION

Mr. ANDERSON. Very briefly.

Judge Rogers, Mr. Bryant asked you some questions about your opinion of Mr. Pride's behavior given your understanding of the friendship between him and Judge Hastings. Following up, given your understanding of the relationship as it existed in 1981, would you have expected Mr. Pride to have covertly recorded a telephone conversation with the judge without telling the judge he was doing that?

Judge ROGERS. I don't think that I would have. I would have been surprised had I known that, because knowing how close they were, I just wouldn't believe that Pride would have done that.

Mr. ANDERSON. And if it were done, would you be surprised if Pride hadn't ever told the judge about it for the intervening seven years?

Judge ROGERS. Well, if he did that, whatever motivated him to do that was probably pretty strong. And if it's that strong, maybe I wouldn't be surprised. I don't think—as I said, my knowledge of Mr. Pride since we finished law school in 1963, you know, hasn't been—I did know about the indictment, but I really didn't know about why. I didn't know too much about the details as to why he was convicted or served time. I just knew of it.

Mr. ANDERSON. But if he recorded it, you'd think that it would have to have had a pretty strong motive?

Judge ROGERS. Very definitely. I would be surprised, because knowing how close they were, I would say that perhaps they were closer than Judge Hastings and I at that time. I'm sure Judge Hastings and I are closer now.

Mr. ANDERSON. Thank you, Judge Rogers.

The CHAIRMAN. Is there recross-examination?

RECROSS EXAMINATION

Mr. BRYANT. One last question, Judge. If Hemphill Pride had realized that he had been brought in to some kind of a scheme to explain away the judge's actions, would you then be surprised to find that he had in self-defense decided to record a telephone conversation that he knew was going to be taking place between him and the judge?

Mr. ANDERSON. Mr. Chairman, I don't think those facts are in the record. I think the recording is in the record, or the fact of the recording, but I don't think they're—that calls on the witness to assume something that hasn't been proven.

The CHAIRMAN. It's a hypothetical question, and the witness can respond if he has an opinion on it.

Judge ROGERS. I would never be surprised at self-defense. I think it's a normal reaction.

Mr. BRYANT. Thank you.

The CHAIRMAN. Is there any additional direct examination?

[No response.]

The CHAIRMAN. If there are no other questions by counsel, does any member of the committee have a question? Senator Leahy?

EXAMINATION BY THE COMMITTEE

Senator LEAHY. Yes, very briefly, Mr. Chairman.

Judge, I want to just make sure I understood an earlier question. You said that had you received a solicitation of funds for Hemphill Pride you would not have responded to that, or not have sent funds because of ethical considerations and——

Judge ROGERS. Yes, sir.

Senator LEAHY [continuing]. Being on the bench and so on. Am I correct in understanding you never did receive any such solicitation directly or indirectly for funds for him, that you can recall?

Judge ROGERS. No, sir. The effect of my testimony primarily was what Alcee or Judge Hastings had told me he had done and he had given to Mr. Pride, and I have no knowledge of anyone else who ever gave any money to Mr. Pride.

Senator LEAHY. That sort of goes into my basic question. Other than what you heard from Judge Hastings in saying that he was trying to raise funds for Mr. Pride, did you ever hear from anybody else, any of the other lawyers you knew or judges you knew or anybody else, that they had received a solicitation of funds for Hemphill Pride?

Judge ROGERS. I don't think so. It may have been discussed, Senator, in some of our meetings. From time to time, we have discussed in the National Bar meetings the efforts to try to help lawyers who were disbarred or suspended or something like that, so I'm not absolutely sure. I have no independent recollection of any solicitations for him as such, but I am aware of solicitations and efforts for other lawyers who were involved.

Senator LEAHY. But you do not recall a specific one on Mr. Pride?

Judge ROGERS. Right.

Senator LEAHY. You don't recall a lawyer saying to you or another judge saying to you, "I've got a solicitation for Hemphill Pride"?

Judge ROGERS. No, sir, I don't recall that.

Senator LEAHY. All right. Thank you, Judge.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. If not, is there any reason this witness cannot be excused at this time?

[No response.]

The CHAIRMAN. You are excused, Judge Rogers. Thank you very much for your testimony.

Judge ROGERS. Thank you. May I stay in and watch?

The CHAIRMAN. You may.

Let me ask counsel or just advise counsel that there have been several witnesses who, after they testified and were excused, have come back into the hearing room and no objection has been raised to it and I had not seen a legitimate basis for trying to prevent that, since obviously anybody can watch television if they don't come back, at any rate. Is there any objection as to this witness remaining to view the proceedings

Mr. BRYANT. Mr. Chairman, the House would only observe that we believe it is incumbent upon the counsel for both sides that there be no good-faith expectation that they intend to recall these witnesses for rebuttal and, absent that good-faith expectation, we find no reason to object to any witness being allowed to stay behind.

The CHAIRMAN. When we excuse witnesses, we are intending to do so for the remainder of the trial. So, you are welcome to stay, Judge Rogers.

Would counsel for Respondent please call his next witness?

Mr. ANDERSON. We call Pearl Dabreau Mapp.

The CHAIRMAN. The list of witnesses that you supplied to the committee lists Pearl Dabreau Owens, is that correct?

Mr. ANDERSON. No, it should be Mapp. Her sister is Owens, and my ability to confuse names after Joy Royals Vickers testified should be legion and well-established.

The CHAIRMAN. Ms. Mapp, would you raise your right hand, please?

Do, you Pearl Dabreau Mapp, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing buy the truth, so help you, God?

Ms. MAPP. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF PEARL DABREAU MAPP

DIRECT EXAMINATION

Mr. ANDERSON. Ms. Mapp, would you state your full name for the committee?

Ms. MAPP. It's Pearl Dabreau Mapp.

Mr. ANDERSON. You will have to lean into the microphone.

Ms. MAPP. Pearl Dabreau Mapp.

Mr. ANDERSON. Where do you presently live?

Ms. MAPP. Presently in Washington, DC.

Mr. ANDERSON. What was your name in 1981?

Ms. MAPP. Pearl Dabreau.

Mr. ANDERSON. And where were you born?

Ms. MAPP. I'm from Trinidad, West Indies.

Mr. ANDERSON. In 1981, had you ever met Judge Alcee Hastings?

Ms. MAPP. Yes.

Mr. ANDERSON. When was that?

Ms. MAPP. It was on an airplane from Miami to Washington, DC.

Mr. ANDERSON. And do you recall when that occurred?

Ms. MAPP. The date?

Mr. ANDERSON. Yes.

Ms. MAPP. It had to have been around Easter, because I usually go to Trinidad for a carnival or Easter, so it would have been either February or March of that year.

Mr. ANDERSON. OK. Did there come occasion when you were invited to have drinks and dinner with the judge in September 1981?

Ms. MAPP. Yes.

Mr. ANDERSON. Can you tell the committee—do you recall what date that was?

Ms. MAPP. From prior testimony, it was in September, I believe.

Mr. ANDERSON. Do you have any present recollection of that, or are you relying on your prior testimony?

Ms. MAPP. I'm just relying on prior testimony.

Mr. ANDERSON. Well, assuming for the moment that the evidence appears to establish that that occurred on Saturday, September 12th, can you tell the committee what you recall today about how you came to visit with the judge that evening?

Ms. MAPP. OK. I received a call prior to the judge coming to Washington, letting me know, you know, just notifying me that he was going to be in D.C. and that he would like to take me out to dinner.

Mr. ANDERSON. Do you recall how many days earlier in advance you received that call?

Ms. MAPP. Probably a day or so before.

Mr. ANDERSON. OK.

Ms. MAPP. And he called and I went over to the hotel and he invited——

Mr. ANDERSON. He called you again when he was in town?

Ms. MAPP. Yes, and we discussed dinner, having dinner, and I said, well, I'd go home and get dressed and come back and I'd also bring my sister along, which is Margaret Dabreau.

Mr. ANDERSON. OK. Now, what time was this conversation?

Ms. MAPP. I think about 4:00, sometime in the afternoon. It was before the dinner, the actual dinner.

Mr. ANDERSON. And did you go home?

Ms. MAPP. Yes, I did.

Mr. ANDERSON. And did you get changed and bring your sister?

Ms. MAPP. Yes, I got changed and I came back with my sister.

Mr. ANDERSON. Do you recall what time you returned to the hotel?

Ms. MAPP. About 7:00, 7:00–8:00 o'clock p.m.

Mr. ANDERSON. And where did you and your sister go when you came into the hotel?

Ms. MAPP. We went back to Judge Hastings' room.

Mr. ANDERSON. And when you arrived in his room, who was present?

Ms. MAPP. There was a man and a lady there, another man and lady. I didn't know them at the time.

Mr. ANDERSON. You were introduced to them at that time?

Ms. MAPP. Yes.

Mr. ANDERSON. Would you remember their names if I——

Ms. MAPP. Again, from prior testimony, it's Mr. McCrary.

Mr. ANDERSON. Do you have any independent recollection, or is that just based on reviewing your prior testimony?

Ms. MAPP. It's been so long, I really don't remember. I did know them prior to then and I really didn't keep any record, you know, of who they were.

Mr. ANDERSON. Can you—about how long did that group remain assembled in the hotel room?

Ms. MAPP. I guess it must have been about an hour, an hour or two. I really don't——

Mr. ANDERSON. Well, what were you all doing during that period?

Ms. MAPP. Just sitting and talking.

Mr. ANDERSON. Were you drinking at all?

Ms. MAPP. Yes.

Mr. ANDERSON. Cocktails?

Ms. MAPP. Yes.

Mr. ANDERSON. What kind of topics were you discussing?

Ms. MAPP. I don't really recall. I didn't really know anybody else there. I don't think it was anything that, you know, that important.

Mr. ANDERSON. And did there come a time when someone else joined the group?

Ms. MAPP. Yes.

Mr. ANDERSON. Can you tell the committee your recollection as to how that came about?

Ms. MAPP. Like I said, after waiting for a while, someone did come to the door and, again, I was introduced to him later on. I didn't know him prior to him arriving.

Mr. ANDERSON. Do you recall his name?

Ms. MAPP. Borders, Bill Borders.

Mr. ANDERSON. OK. Searching your memory, at the time—prior to the time that Mr. Borders arrived, did you have any awareness that he was expected from any source?

Ms. MAPP. I don't recall them announcing particularly they waited on him, no.

Mr. ANDERSON. Did you have any sense that the group was waiting for anyone, even if you didn't know for whom?

Ms. MAPP. No, I didn't know that they were waiting for someone.

Mr. ANDERSON. Again, searching back for your impressions, was there—prior to the time people talking with you about it, do you recall having any sense that anything was unusual about that evening?

Ms. MAPP. No.

Mr. ANDERSON. To anticipate a question, did Mr. Borders have any baggage or anything with him when he came in the door?

Ms. MAPP. No.

Mr. ANDERSON. What did you do after Mr. Borders arrived?

Ms. MAPP. We all went down to dinner in the hotel.

Mr. ANDERSON. And you all dined together?

Ms. MAPP. Yes.

Mr. ANDERSON. All right. Do you recall, when you got down, whether reservations had been phoned down or there were any reservations, or you just went down to the dining room and——

Ms. MAPP. I just recall us going to the dining room. I don't know whether prior arrangements had been made.

Mr. ANDERSON. Did you have to wait to get seated?

Ms. MAPP. I don't really recall.

Mr. ANDERSON. After dinner, what, if anything, happened?

Ms. MAPP. Everyone—we did go back to the room and then everyone went their separate ways.

Mr. ANDERSON. OK. When you say "we went back to the room," did everyone go back, you and the judge and your sister—did Mr. Borders go back to the room with you, if you recall?

Ms. MAPP. I don't recall, no.

Mr. ANDERSON. Now, Ms. Dabreau, subsequent to the events of that evening, have you been interviewed about these events?

Ms. MAPP. Yes, on several occasions.

Mr. ANDERSON. OK. Do you recall when the first occasion was?

Ms. MAPP. It was about maybe four or five days after the dinner.

Mr. ANDERSON. And who did that? Who interviewed you then?

Ms. MAPP. It was an FBI agent. I don't recall the name, but it was an FBI agent.

Mr. ANDERSON. Four or five days after September 12th?

Ms. MAPP. Yes.

Mr. ANDERSON. And what is the next interview you recall?

Ms. MAPP. We were called again—meaning me, my sister and I—sometime after that, I'm not sure what year, but we were called again about the same, about the same interview, basically.

Mr. ANDERSON. Now, you say you were called, was that interview by telephone or did FBI agents come to your house?

Ms. MAPP. By telephone, that time.

Mr. ANDERSON. And the one that you recall four or five days after September 12th, was that by telephone or did agents come to your house?

Ms. MAPP. I think that one was by telephone also.

Mr. ANDERSON. Now, subsequent to the second telephone interview you've mentioned, do you recall being further contacted with regard to this?

Ms. MAPP. Yes, when the case was coming up in Atlanta, we were told that we were going to be subpoenaed and they wanted to issue it. Now, at that time I told him I already discussed the same things and anything else they wanted to discuss with me, I would like to go and see my attorney and we did that.

Mr. ANDERSON. And who is your attorney?

Ms. MAPP. At that time, it was Mr. Williams, J. Leon Williams.

Mr. ANDERSON. OK. And after you talked with your attorney, did you agree to be interviewed by the FBI?

Ms. MAPP. Yes.

Mr. ANDERSON. And was that interview conducted in the presence of your attorney?

Ms. MAPP. Yes.

Mr. ANDERSON. Thereafter, did you go to Atlanta to testify?

Ms. MAPP. Yes, I did.

Mr. ANDERSON. You have had an opportunity to review your prior testimony——

Ms. MAPP. Yes.

Mr. ANDERSON [continuing]. Before returning here today?

Ms. MAPP. Yes.

Mr. ANDERSON. Is that testimony consistent with what you've told the committee today?

Mr. BARON. I object to that. The testimony will speak for itself.

The VICE CHAIRMAN. Overruled.

Mr. ANDERSON. Let me rephrase the question. Even I think I agree with counsel's objection on that one.

The VICE CHAIRMAN. I'll pay more attention to his objections in the future.

Mr. ANDERSON. I will try and signal the ones that I think are there.

The VICE CHAIRMAN. Even more attention.

Mr. ANDERSON. Ms. Dabreau, based upon your prior interviews which you've looked at and your testimony, have you shared with the committee today your best recollection of September 12, 1981?

Ms. MAPP. Yes.

Mr. ANDERSON. Throughout the interviews and being called to testify repeatedly, has your recollection of those events changed?

Ms. MAPP. No, it hasn't.

Mr. ANDERSON. I have no further questions.

The VICE CHAIRMAN. Any cross-examination?

Mr. BARON. Yes, Senator. One moment, please.

[Pause.]

Mr. BARON. Good morning, Ms. Mapp. How are you?

CROSS EXAMINATION

Ms. MAPP. Fine, thank you.

Mr. BARON. Ms. Mapp, I just want to ask you a few questions. Do you recall that you appeared before the Investigating Committee down in Atlanta to answer some questions about this same subject matter?

Ms. MAPP. Yes, that's what I just said.

Mr. BARON. And that would have been in——

The VICE CHAIRMAN. Is your name Ms. Mapp or Ms. Dabreau?

Ms. MAPP. My maiden name is Dabreau. My married name is Mapp.

The VICE CHAIRMAN. Ms. Mapp, would you pull the microphone closer, please?

Ms. MAPP. Yes. Is that better?

The VICE CHAIRMAN. I think so. We will know in a moment.

Mr. BARON. If I suggested to you that you appeared before the Investigating Committee in Atlanta on April 8, 1986, does that sound right to you?

Ms. MAPP. That sounds right.

Mr. BARON. OK. And you were sworn at that time, were you not?

Ms. MAPP. Yes.

Mr. BARON. OK. And you were asked questions about these same events, particularly about the night of September 12th?

Ms. MAPP. Yes.

Mr. BARON. OK. Do you recall at that time being asked about the circumstance about Mr. Borders' arrival, that is, whether he seemed to be expected, whether they were waiting for him? Do you recall being asked questions about that?

Ms. MAPP. Yes.

Mr. BARON. OK. Am I not correct, in response to the question, "Do you know if Judge Hastings or the other people in the room were expecting someone else to join you for dinner?" do you recall testifying, "Well, they didn't go to dinner right away, so that, once we got there, we didn't just get up and go to dinner, so apparently they were waiting for something." Your next question, "Do you recall any conversation on September 12th about waiting for somebody else? Answer: They never mentioned to us that they were waiting for anybody else, we all just sat and talked and, well, of course they weren't ready to go to dinner, so I had no idea why we weren't going to dinner right then and there." Do you recall testifying to that effect?

Ms. MAPP. That's what happened.

Mr. BARON. OK. Now, do you recall there was a time when Mr. Borders came to the room?

Ms. MAPP. Yes.

Mr. BARON. OK. And you were asked this question: "When Mr. Borders arrived, did Judge Hastings seem surprised to see him?" And your answer was, "No, they seemed to have known who he was." Question: "Well, did they seem to know he was coming that night?" And your answer was, "They seemed—they didn't show us they were surprised that he was coming, they seemed to know that he was, you know, they seemed to have been expecting him." Do you recall testifying to that?

Ms. MAPP. If that's what is on there.

Mr. BARON. Would you like to take a look at it?

Ms. MAPP. I've seen it.

Mr. BARON. Isn't that what it says?

Ms. MAPP. Yes.

Mr. BARON. And isn't that what you testified to under oath?

Ms. MAPP. Well, at the time while we were waiting, and again being questioned about it, that was the best that I could say. I mean, I didn't know any of those people that were there. I didn't know that they were expecting him, so I just said at the time what I remembered and that's what I did.

Mr. BARON. And that was three years ago?

Ms. MAPP. No, this happened almost eight years ago.

Mr. BARON. Your testimony was three years ago, in 1986, was it not?

Ms. MAPP. Well, yes.

Mr. BARON. And it was under oath?

Ms. MAPP. Yes.

Mr. BARON. And you were doing your best to tell the truth then, were you not?

Ms. MAPP. Yes.

Mr. BARON. OK. One other thing: Your recollection is that when Mr. Borders came, he did not have any baggage with him, is that correct?

Ms. MAPP. I don't recall him having anything.

Mr. BARON. Thank you.

The CHAIRMAN. Is there additional examination?

REDIRECT EXAMINATION

Mr. ANDERSON. Just briefly, Mr. Chairman.

Ms. Mapp, prior to going to Atlanta, you were interviewed by an agent of the FBI, is that correct?

Ms. MAPP. Yes.

Mr. ANDERSON. When you got to Atlanta, did you fly up in the evening or in the morning?

Ms. MAPP. I was in Florida, I was living in Florida at the time and, yes, I did fly to Atlanta.

Mr. ANDERSON. All right. And prior to going into the room to testify, did you meet with anyone to be interviewed?

Ms. MAPP. Not at that time.

Mr. ANDERSON. So, you were just called—did you meet with John Doar or Stuart Webb?

Ms. MAPP. After I got in there, but I didn't meet with them prior to that. Over the phone, I did talk to some people as to who I would be interviewed by and that type of thing.

Mr. ANDERSON. So, when you appeared in Atlanta, if I understood your testimony before, you had been at least twice interviewed by the FBI——

Ms. MAPP. Yes.

Mr. ANDERSON [continuing]. And you had spoken with the committee members over the telephone?

Ms. MAPP. Yes, or the attorneys. I'm not sure how it works.

Mr. ANDERSON. And you were questioned in that room by—do you recall who asked you the questions?

Ms. MAPP. No.

Mr. ANDERSON. Was it an attorney?

Ms. MAPP. It was someone from the panel, I don't know who.

Mr. ANDERSON. Did the judges also ask you questions?

Ms. MAPP. Yes.

Mr. ANDERSON. Thank you. No further questions.

The CHAIRMAN. Is there any recross-examination?

Mr. BARON. No questions.

The CHAIRMAN. Are there questions from the committee? Senator Specter?

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. I have a very brief subject matter.

Ms. Mapp, I will lay it all out before you, in the interest of brevity. It might seem unusual that, when Judge Hastings invited you to come as his companion for the evening, that you brought a sister, perhaps suggesting that someone else was anticipated to be coming, and my question to you is, was that present or was there some other reason why your sister was brought along for the evening?

Ms. MAPP. The only reason why my sister got there was because I wanted her to meet Judge Hastings, and that was the only reason.

The VICE CHAIRMAN. I didn't hear that.

Ms. MAPP. I just wanted her to meet Judge Hastings. It had nothing to do with her meeting anyone there.

The VICE CHAIRMAN. Well, why was it that you wanted her to meet Judge Hastings?

Ms. MAPP. Because I had met him, just like you meet any other date and you want your sister to meet the person, that was all the reason she was there.

The VICE CHAIRMAN. Well, it just seemed a little unusual to me that a sister would be brought along on a date.

Ms. MAPP. If she was invited, why not?

The VICE CHAIRMAN. But there's no suggestion that she was along as sort of the extra person for someone else who might come?

Ms. MAPP. No. She went strictly because he invited her to have dinner with us.

The VICE CHAIRMAN. Thank you very much.

Ms. MAPP. You're welcome.

The CHAIRMAN. Are there other questions? Senator Bond, did you have questions?

Senator BOND. You said, Ms. Mapp, that the judge invited her to come along?

Ms. MAPP. He invited me and I mentioned to him I wanted him to meet my sister and he said sure, bring her along.

Senator BOND. Did your sister live in the same area that——

Ms. MAPP. We lived together. We were roommates at the time.

Senator BOND. And that was the first opportunity the judge had had to meet your sister?

Ms. MAPP. That's correct.

Senator BOND. Was it customary for you to take your sister on other social outings?

Ms. MAPP. Yes.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rudman, did you have questions?

Senator RUDMAN. Really, only two.

Ms. Mapp, how long had you known Judge Hastings at that time?

Ms. MAPP. Well, I met him about, I believe 1981, in February, the beginning of the year when I was on my way back from Trinidad.

Senator RUDMAN. And I would ask you this: Had you ever met Mr. Borders before?

Ms. MAPP. No.

Senator RUDMAN. Had you ever visited with the judge here in Washington, other than that one occasion, socially?

Ms. MAPP. No.

Senator RUDMAN. This was the only occasion at that time?

Ms. MAPP. Yes.

Senator RUDMAN. Thank you.

The CHAIRMAN. Senator Leahy, did you have questions?

Senator LEAHY. I'm just curious, how old were you in September 1981?

Ms. MAPP. I was born April 28, 1955.

Senator LEAHY. Thank you.

The CHAIRMAN. Any other questions from members of the committee?

[No response.]

The CHAIRMAN. Is there any reason this witness could not be excused?

[No response.]

The CHAIRMAN. If not, you are excused, Ms. Mapp. We very much appreciate your testimony.

Would counsel for Respondent please call his next witness.

Mr. BRYANT. Mr. Chairman, if I might interrupt, we have just been notified of a vote and perhaps this would be a convenient time to let us go and make that vote.

The CHAIRMAN. We will do that. We will recess until the House managers return from their vote.

[Short recess.]

The CHAIRMAN. The committee will come to order.

The VICE CHAIRMAN. How long after 7:00 o'clock do we anticipate going this evening?

Mr. ANDERSON. If there are not too many votes, Senator, I think we anticipate going until probably 4:30, at the speed we are going now. The witnesses that are up, we are moving through fairly rapidly.

The VICE CHAIRMAN. The question was designed to elicit that response.

Mr. ANDERSON. Really, I think it is more a function of your votes than our need for time.

The CHAIRMAN. Would counsel go ahead and call Respondent's next witness, please.

Mr. ANDERSON. I call Judge Matthew Perry.

Mr. BARON. Mr. Chairman, before Judge Perry takes the stand, the House would like to offer into evidence the transcript of Pearl Dabreau Mapp's testimony before the Investigating Committee that was referred to in the course of her cross-examination as a House exhibit. I believe it is 227.

The CHAIRMAN. Is there objection to that exhibit?

Mr. ANDERSON. Mr. Chairman, if we could reserve that point to a later time, we would love to see the whole Investigating Committee record come in, so that it is available to all Senators as it has been to you. I think that Ms. Dabreau was confronted with whatever Mr. Baron wanted to read in his cross-examination. I'm not quite sure, unless we are going to admit prior testimony for everyone who appears here, so we can find out where the inconsistencies are, I'm not sure of the purpose of this particular proffer.

Mr. BARON. I would just note that counsel for Respondent did move into evidence the IC testimony of Margaret Dabreau and I don't see any difference in principle or any different reason why this should not be——

Mr. ANDERSON. I will tell what the difference in principle is. Margaret Dabreau claimed that she had failing recollection, that was recollection recorded on a prior occasion that she could today identify as a statement made when she did have recollection. Ms. Mapp today appeared to have full recollection and was confronted with any inconsistencies and I think the record stands independently.

The CHAIRMAN. We have followed a liberal rule as far as admission of prior testimony which has been used in cross-examination and we will do so here and we will admit the exhibit.

Mr. BARON. Thank you, Mr. Chairman.

[The document referred to was marked House Exhibit No. 227 and was received in evidence.]

The CHAIRMAN. Judge Perry, would you please come forwards?
Judge PERRY. Yes.
The CHAIRMAN. Would you raise your right hand?
Do you, Matthew Perry, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?
Judge PERRY. I do.
The CHAIRMAN. Please be seated.

TESTIMONY OF JUDGE MATTHEW J. PERRY

DIRECT EXAMINATION

Mr. ANDERSON. Judge Perry, so that the record is clear, would you state your full name to the committee?
Judge PERRY. Yes, I'm Matthew Perry, Matthew J. Perry.
Mr. ANDERSON. And what is your present position, sir?
Judge PERRY. I'm a United States District Judge.
Mr. ANDERSON. And how long have you served in that capacity?
Judge PERRY. Since 1979, September 1979.
Mr. ANDERSON. Prior to 1979, what was your position?
Judge PERRY. I was for three-and-a-half years prior to that time a judge on the United States Court of Military Appeals.
Mr. ANDERSON. And prior to your service on the United States Court of Military Appeals, what was your position?
Judge PERRY. For some 13 years—for some 25 years prior to that, I practiced law in South Carolina.
Mr. ANDERSON. And where in South Carolina was your practice?
Judge PERRY. In Columbia, South Carolina.
Mr. ANDERSON. Judge Perry, do you know a man named Hemphill Pride?
Judge PERRY. Yes, I do, sir.
Mr. ANDERSON. And when did you first meet Mr. Pride?
Judge PERRY. Well, I've known Mr. Pride practically all of his life.
Mr. ANDERSON. And had you known his parents?
Judge PERRY. Yes.
Mr. ANDERSON. Do you know Judge Alcee Hastings?
Judge PERRY. Yes, I do.
Mr. ANDERSON. When did you first meet Judge Hastings?
Judge PERRY. I met Judge Hastings when he was practicing law in Florida, he and Mr. Pride were friends of long-standing, and Judge Hastings, then Mr. Hastings, frequently visited Mr. Pride in Columbia and was oftentimes in and out of our law offices.
Mr. ANDERSON. Now, were you and Mr. Pride associated in the law firm, in a law firm?
Judge PERRY. Yes.
Mr. ANDERSON. And for how long, how long was Mr. Pride in your law firm, sir?
Judge PERRY. Since shortly after his graduation from law school and his admission to the bar, sometime in the mid-1960's.
Mr. ANDERSON. And was he continuously with you until you assumed the bench?
Judge PERRY. Yes.

Mr. ANDERSON. Now, you had an opportunity to, I take it—let me ask a question. Did you have an opportunity to observe Judge Hastings and Mr. Pride in the relationship between the two men?

Judge PERRY. Yes. It wasn't a constant visitation, but Judge Hastings came often and, to my knowledge, Mr. Pride frequently went to Miami. The two of them were very closely associated and had a very deep personal friendship.

Mr. ANDERSON. And during this period, were you active in the affairs of the National Bar Association?

Judge PERRY. Well, I was never active in the affairs. I did sometimes attend its meetings, yes.

Mr. ANDERSON. Did you know William Borders?

Judge PERRY. I came to know Mr. Borders, not as well as I know Judge Hastings.

Mr. ANDERSON. Now, based upon your having, through the National Bar Association, your own position as a judge, and your both practice and time as a judge, did you form—did you become aware of Judge Hastings' reputation for truthfulness?

Judge PERRY. Yes, I think so, although I was never involved with him professionally. I saw him in social settings. I knew him as a friend of Mr. Pride's, but in moving about and seeing him in a few professional settings, yes, I think I came to know him and to know his reputation.

Mr. ANDERSON. And what was his reputation?

Judge PERRY. It was good.

Mr. ANDERSON. To keep this fairly short, were you aware of any negative aspects of Judge Hastings' reputation in 1981?

Judge PERRY. No, certainly not in reference to his integrity.

Mr. ANDERSON. In reference to anything?

Judge PERRY. Well, in reference to nothing. I didn't mean to qualify that. No, I knew nothing adversely about him.

Mr. ANDERSON. And from your observations and your knowledge of Mr. Pride personally and of Judge Hastings, in your opinion, did Mr. Pride rely upon Judge Hastings in his professional and other endeavors?

Judge PERRY. Well, I think the two of them interacted really together as friends and generally supported each other in whatever their respective endeavors might have been.

Mr. ANDERSON. Now, did there come a time when Mr. Pride experienced some financial and later legal difficulties?

Judge PERRY. Yes.

Mr. ANDERSON. And what were those, to the best of your recollection?

Judge PERRY. Well, I think this committee already knows that Mr. Pride was involved in a matter that resulted in a conviction and there were some resulting financial problems.

Mr. ANDERSON. And did Mr. Pride share with you at that time, in the late seventies, after his conviction, did he communicate with you whether or not he hoped or expected to one day regain his license to practice law?

Judge PERRY. Oh, yes. I knew that he had an insatiable desire to be readmitted.

Mr. ANDERSON. And to the best you can recall, when was that insatiable desire formulated?

Judge PERRY. Well, I would say from the very beginning, and certainly this was the hope of all who know him.

Mr. ANDERSON. And did Mr. Pride freely communicate, to the extent you observed it, that insatiable desire with his friends and others with whom he was associated and affiliated?

Judge PERRY. Well, of course, at the time I was no longer on the scene, I did not have the occasion to interact with them on a day-to-day basis, but I do know that, on the basis of their prior association and their long-time friendship, that Mr. Pride would have interacted with Judge Hastings.

Mr. ANDERSON. And based upon your observation of Judge Hastings, would Judge Hastings have responded?

Judge PERRY. Yes, their friendship was, in my view, a very deep one, a deep personal friendship. There is no doubt in my mind that Judge Hastings would have responded very positively.

Mr. ANDERSON. And in your view, would Mr. Pride have asked for that response, or would it have been something that the judge might have volunteered?

Judge PERRY. Well, I suspect that Judge Hastings would have done so voluntarily. I recognize that that contains an element of speculation, but that's the best I can do.

Mr. ANDERSON. There is a great deal in this case, Judge Perry, that contains a certain amount of speculation.

Have you continued to maintain a social relationship with Mr. Pride over the years?

Judge PERRY. Yes, I know Mr. Pride, have known him, as I indicated earlier, almost all of his life. I don't have the occasion to see him often now. He has been readmitted to practice and he seems to be coming along very well.

Mr. ANDERSON. Judge Perry, I have no more questions.

Judge PERRY. All right.

The CHAIRMAN. Cross-examination?

CROSS EXAMINATION

Mr. BRYANT. Your Honor, I'm John Bryant, I'm a member of the House of Representatives from Texas and I'm one of the managers of the House in this case against Judge Hastings.

Judge Perry, you have been a United States District Judge for 10 years, is that correct?

Judge PERRY. As of September of this year, I will have been.

Mr. BRYANT. I would like to ask you a few questions about your position. As a United States District Judge, you have two law clerks, is that correct?

Judge PERRY. Yes.

Mr. BRYANT. And those law clerks help you research legal issues and may also write court orders and opinions, is that correct?

Judge PERRY. They do.

Mr. BRYANT. Judge Perry, when you give a law clerk an assignment to write an order or an opinion for you, you tell him or her what the outcome of that order or opinion should be. It is your decision, is that correct?

Judge PERRY. That's correct.

Mr. BRYANT. I would like to ask you about another aspect of being a Federal judge. Is it proper for a Federal judge to take steps to solicit funds for an individual or group for any reason?

Judge PERRY. No, we are prohibited by the rules from engaging in any fund-raising activity.

Mr. BRYANT. That's the Judicial Canon of Ethics?

Judge PERRY. That's correct.

Mr. BRYANT. In fact, it would be especially improper for a judge to take steps to solicit funds from attorneys who may at some time appear before them, isn't that correct?

Judge PERRY. Well, it's improper for a judge to engage in any fund-raising activity.

Mr. BRYANT. Turning to your knowledge of Judge Hastings and Hemphill Pride, Judge, in your estimation, how close were Judge Hastings and Mr. Pride prior to Judge Hastings' indictment in 1981?

Judge PERRY. My observation is that they were very closely associated, they were deep personal friends.

Mr. BRYANT. I would like to ask you, based on your knowledge of their relationship, would you think it would be even possible for Mr. Pride to do something or say something that would, on purpose, hurt Judge Hastings?

Judge PERRY. I'm sorry, would you——

Mr. BRYANT. Based on your knowledge of their deep and close relationship, would you think it was even possible for Mr. Pride to do something or say something that may very well hurt Judge Hastings?

Judge PERRY. Well, I don't think so. As I say, they were very deep, loyal, personal friends and——

Mr. BRYANT. Judge Perry, has Judge Hastings ever approached you with respect to helping Hemphill Pride in any way, either during 1981 or at any other time?

Judge PERRY. No. Judge Hastings, of course, knows and certainly at that time knew that I too had a direct interest in Mr. Pride and there would have been no occasion for him to seek my help, because, of course, I had an independent relationship with Mr. Pride.

Mr. BRYANT. I see. Has William Borders ever approached you with respect to helping Hemphill Pride——

Judge PERRY. No.

Mr. BRYANT [continuing]. Especially, given that Mr. Pride was an associate in your firm and a fellow attorney in Columbia, South Carolina?

Judge PERRY. No.

Mr. BRYANT. Thank you very much.

The CHAIRMAN. Is there redirect examination?

REDIRECT EXAMINATION

Mr. ANDERSON. Oh, sure.

Judge Perry, have you ever on occasion, in making a decision, found yourself trying to make a decision which would distinguish a case with which you disagreed so you could go forward and reach a result you thought was just?

Judge PERRY. Oh, yes, I think that is a part of rationalization and——

Mr. ANDERSON. And if you assigned a clerk a case such as that and telling him the result you wanted to reach, recognizing that there was some serious distinguishing to be done, and the clerk later came back to you and said, "Judge, I can't do it and here's another decision where the Court of Appeals has simply closed off the loophole," would you revisit the question of whether you could go forward with the decision you had asked him to reach?

Judge PERRY. No. When the Court of Appeals speaks, unless the Supreme Court has said otherwise, that's the end of it as far as a trial judge is concerned.

Mr. ANDERSON. So, if you had tried to avoid one precedent and told the clerk that is what you wanted to do, he came back to you and said, "Judge, I can't avoid it intellectually and the Court of Appeals has reaffirmed its position," you would reverse yourself?

Judge PERRY. That would be the end of it, yes.

Mr. ANDERSON. Given your perception of the relationship between Hemphill Pride, the friendship he had for Judge Hastings, would it be consistent with your understanding for Hemphill Pride to have covertly tape-recorded a telephone conversation with Judge Hastings, without telling Judge Hastings he had done so?

Judge PERRY. Well, of course, you have to understand, I don't know anything at all about the merits of this controversy and, undoubtedly, there are many things that you who are involved in this proceeding know about that I would consider surprising, and so I suppose that would fall in the category that you suggest.

Mr. ANDERSON. That would be surprising?

Judge PERRY. Yes.

Mr. ANDERSON. But throughout this period, Mr. Pride's desire to regain admission to the bar was, I think as you said, insatiable?

Judge PERRY. No question about that.

Mr. ANDERSON. Thank you, sir.

The CHAIRMAN. Is there any additional cross-examination of the witness?

RECROSS EXAMINATION

Mr. BRYANT. Excuse me, Judge, I'm trying to get this machine turned off here.

Just one question. You answered a question in response to Mr. Anderson with regard to your duty to follow appellate court decisions when they have been handed down, and I think he asked you a question with regard to would you try to find some way to distinguish an opinion, that is, distinguish a set of facts if you disagreed in some fashion with the appellate court. Did I hear him ask you that?

Judge PERRY. I understood him to ask me whether it is not a fact that, in writing opinions, a judge must sometimes distinguish the facts of a particular case from those on which a court acted in another case. He might not have phrased it exactly that way——

Mr. BRYANT. OK.

Judge PERRY [continuing]. But that is the essence of what I understood him to be asking me.

Mr. BRYANT. My question is just simply this: If the original precedent was from your own Court of Appeals, would you try to distinguish it under those circumstances, or would you follow the Court of Appeals?

Judge PERRY. In every instance, I would have to follow my Court of Appeals, unless, of course, the Supreme Court has said otherwise. Now, of course, even following my own Court of Appeals, I must be certain that the facts of the case before me are governed by the precedent that has been established by the Court of Appeals.

Mr. BRYANT. Thank you very much.

Judge PERRY. Very good.

The CHAIRMAN. Are there questions from the members of the committee? Senator Gorton?

EXAMINATION BY THE COMMITTEE

Senator GORTON. Judge, either you didn't say or I missed it, what district are you a District Court judge in?

Judge PERRY. In the District of South Carolina.

Senator GORTON. Is that in Columbia?

Judge PERRY. Yes.

Senator GORTON. At the time that Mr. Pride was convicted and sentenced and lost his ability to practice and retained his desire to come back into the bar, did he ask you for any help or for any letters to persons who would have authority to reinstitute him to the bar of South Carolina?

Judge PERRY. No, he did not.

Senator GORTON. You had no conversations with him on that subject?

Judge PERRY. No. My law partner, who is now deceased, Lincoln Jenkins, did interact with Mr. Pride a great deal and did in fact communicate with the bar officials in his behalf.

Senator GORTON. But he was still practicing law?

Judge PERRY. Yes.

Senator GORTON. And you at that time were already a Federal District Court judge?

Judge PERRY. I was—yes. Yes.

Senator GORTON. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions from the committee?

[No response.]

The CHAIRMAN. If not, is there any reason that Judge Perry cannot be excused at this time?

[No response.]

The CHAIRMAN. Judge, you are excused. Thank you very much for your testimony.

Judge PERRY. Thank you.

The CHAIRMAN. Let me ask counsel for the House if they have a vote on and are we required to recess at this time?

Mr. BRYANT. We do have a vote, followed by another vote.

The CHAIRMAN. Why don't we recess until 1:30, at which time we will continue with Respondent's case.

[Whereupon, at 11:48 a.m., the committee was in recess, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will reconvene.

Before we continue with another witness, Judge Hastings had indicated he wished to make a statement on the record about his inability to be present for all of the session this afternoon.

If you'd like to make any such statement, go right ahead.

Judge HASTINGS. Very briefly, Mr. Chairman.

I think this afternoon is going to go a lot quicker anyway, but I have a previous standing commitment. At about quarter of 4:00, I plan to exit. And once I do, I waive all rights pertaining to any of the proceedings, and Mr. Anderson or my other attorneys can go forward in my absence with the Chair's permission and if the House does not object.

The CHAIRMAN. We appreciate that statement, and we will plan to go forward even at that time.

Let me indicate one other thing before we call another witness. We do have a stipulation now signed both by counsel for Judge Hastings and by Representative Bryant, a stipulation that Joseph Nesline has become incompetent to testify for the reasons set forth in the letter from his counsel appended to the stipulation. So I think that settles that issue as far as his being required as a witness.

At this time, would counsel for respondent call his next witness?

Mr. ANDERSON. We call Betty Williams.

The CHAIRMAN. Would you raise your right hand, please? Do you, Betty Williams, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. WILLIAMS. I do.

The CHAIRMAN. Please be seated.

Mr. ANDERSON. Ms. Williams, will you tell the committee your full name?

TESTIMONY OF BETTY ANN WILLIAMS

DIRECT EXAMINATION

Ms. WILLIAMS. Betty Ann Williams.

Mr. ANDERSON. And where do you work, Ms. Williams?

Ms. WILLIAMS. I'm secretary to United States District Judge Alcee L. Hastings.

Mr. ANDERSON. How long have you served in that capacity?

Ms. WILLIAMS. Since December of 1980.

Mr. ANDERSON. Since December 1980, how many times have you testified concerning the events——

Ms. WILLIAMS. I believe this is my sixth.

Mr. ANDERSON. Now, directing your attention to 1981, apart from yourself, Ms. Williams, who was employed in Judge Hastings' chambers?

Ms. WILLIAMS. There were two law clerks, Alan Ehrlich and Jeffrey Miller; courtroom deputy, Marilyn Carter; and the court reporter at that time was Helen Powell.

Mr. ANDERSON. Now, could you describe for the committee what your duties as secretary to Judge Hastings were?

Ms. WILLIAMS. I typed civil and criminal pleadings, correspondence. I opened and routed the mail, answered the telephone, han-

dled Judge Hastings' travel, both official and his personal travel, and just acted as the office manager.

Mr. ANDERSON. Now, when you say you typed civil and criminal pleadings, do you mean orders and opinions that the judge was issuing?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. And would you type those at his direction, the law clerk's direction? Who?

Ms. WILLIAMS. Both the law clerks and the judge.

Mr. ANDERSON. And you were responsible for essentially typing all orders in their final form?

Ms. WILLIAMS. Not all of them, but especially long orders. The law clerk did type short orders.

Mr. ANDERSON. The law clerk would type some of the short orders?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Now, in performing your duties, scheduling and other duties, what kinds of records were kept, did you maintain in the judge's chambers?

Ms. WILLIAMS. Travel—scheduling as far as travel?

Mr. ANDERSON. For traveling, daily schedule. Give the committee a feel for how you managed the office and aided the judge in scheduling his work.

Ms. WILLIAMS. Well, I kept diaries for both court scheduling and the judge's travel scheduling, and I would just make the entries in the diaries.

Mr. ANDERSON. Now, did you make entries in terms of what cases were scheduled when you say you maintained court diaries?

Ms. WILLIAMS. As related to court, that's correct. What hearings were scheduled for that particular day.

Mr. ANDERSON. And did Marilyn Carter have a role in court diaries?

Ms. WILLIAMS. It was Marilyn's responsibility, yes.

Mr. ANDERSON. You tried to maintain your own records?

Ms. WILLIAMS. Right. We tried to interact. We let each other know what was going on in court so I would have an idea.

Mr. ANDERSON. Well, during the year 1981, how many sets of diaries were in chambers?

Ms. WILLIAMS. I maintained a set on my desk. I maintained a set for Judge Hastings. Of course, Marilyn had her diary, and the law clerks had a diary.

Mr. ANDERSON. Now, how did you go about making the judge's travel arrangements? How did that happen?

Ms. WILLIAMS. Once Judge Hastings advised me that he was going to accept a speaking engagement, I would start compiling a file.

Mr. ANDERSON. And what would go into that file?

Ms. WILLIAMS. The letter of acceptance, the letter that we may have received asking him to be a speaker, telephone messages. Whatever we received during that period of time, I would compile into a file.

Mr. ANDERSON. And who ordinarily would make the necessary reservations and travel arrangements for the judge?

Ms. WILLIAMS. I did.

Mr. ANDERSON. And what was your practice after those arrangements were made?

Ms. WILLIAMS. Well, I would give Judge Hastings the file that I compiled, and I would normally keep a copy of the itinerary or a copy of the letter, contact person in case we needed to get back in touch with them.

Mr. ANDERSON. When you say the itinerary, what was the itinerary?

Ms. WILLIAMS. It was a form that I made up the travel schedule, airline schedule.

Mr. ANDERSON. And so his scheduled travel, you would, before you gave him the file, give him an itinerary of where he was supposed to catch the plane and what time and that kind of stuff?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. May I approach the witness, Mr. Chairman?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Ms. Williams, I show you what has been marked—let's start with Respondent's Exhibit 94, which is also marked Defendant's Exhibit No. 16. I wonder if you could identify that for the committee.

Ms. WILLIAMS. This is a travel itinerary I prepared for Judge Hastings when he was traveling in September of '81.

Mr. ANDERSON. And what are the dates shown on there? Could you tell the committee what that shows?

Ms. WILLIAMS. Beginning September 11, 1981, he was going from Miami to Washington; September 13, 1981, Washington to Harrisburg, Pennsylvania; September 14, 1981, from Harrisburg back to Fort Lauderdale.

Mr. ANDERSON. Now, what are the documents that are appended to that travel itinerary?

Ms. WILLIAMS. There's a letter inviting him to be the guest speaker, keynote speaker for a juvenile officer's conference in Harrisburg, Pennsylvania, dated July 29, 1981. There's an additional letter dated August 24, 1981, giving him additional information regarding the conference; Judge Hastings' September 3, 1981, letter, confirmation letter; and just a program, I believe, here of the program that he was attending.

Mr. ANDERSON. And is that a typical kind of travel file that you would have maintained for Judge Hastings in this period?

Ms. WILLIAMS. Yes, it is.

Mr. ANDERSON. And you would have given him the originals of those and kept the file in your filing system?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Mr. Chairman, I'd move the admission of that exhibit. Its relevance is it bears upon the weekend of September 12th when the judge was in Washington, but it also illustrates an office practice, which I think——

The CHAIRMAN. Is there objection?

Mr. BRYANT. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 94 and was received in evidence.]

Mr. ANDERSON. Now, directing your attention to Respondent's Exhibit No. 97, which is also marked Defendant's Exhibit 18, can

you tell us what that was? First of all, let me ask, on the second page, is that your handwriting?

Ms. WILLIAMS. Yes, it is.

Mr. ANDERSON. OK. Could you explain what this is?

Ms. WILLIAMS. Exhibit 97 is an itinerary that I prepared for Judge Hastings for the period October 7th through the 22nd. Do you want me to list all of the travel?

Mr. ANDERSON. Why don't you tell the—now, let me ask you the question first. You prepared these in advance, so that's merely the judge's scheduled commitments for that period. That doesn't mean necessarily where he went or what he did?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Do you recall about what time, how far in advance you prepared that itinerary?

Ms. WILLIAMS. Normally, I prepare it two to three months in advance. As soon as we get a letter of invitation, I would normally start. Once he accepted it, I would start preparing it.

Mr. ANDERSON. Would you update it if his plans changed?

Ms. WILLIAMS. Oh, yes. They do change.

Mr. ANDERSON. Would you tell the committee what his travel plans were for the month of October 1981 based upon that itinerary?

Ms. WILLIAMS. Again, on October 7th, he was going from Miami to Tallahassee; October 9th, Tallahassee to Washington, DC; October 11th, Washington, DC, to Orlando, Florida; October 11th—or the 12th, I have here, Orlando back to Miami; October 14th, Fort Lauderdale, Florida, to Louisville, Kentucky; October 16th, Louisville, Kentucky, to Dayton, Ohio; October 21st, Columbus, Ohio, to Orlando, Florida; October 22nd, Orlando, Florida, to Fort Lauderdale, Florida.

Mr. ANDERSON. And what are the notes on the back of that, just so the record is clear?

Ms. WILLIAMS. I would have made these when I was working on the reservations, writing down different flights.

Mr. ANDERSON. Mr. Chairman, I would move, again, the admission of Respondent's——

The CHAIRMAN. What is the number of this?

Ms. WILLIAMS. 97.

Mr. ANDERSON. Respondent's No. 97.

The CHAIRMAN. Respondent's Exhibit No. 97. Is there objection to that?

Mr. BRYANT. Temporarily, there is Mr. Chairman. We might examine it a bit more.

The CHAIRMAN. Please look at it.

Mr. ANDERSON. Ms. Williams, could you explain a bit more? Are these notes related to planning out this trip, or can you tell?

Ms. WILLIAMS. I believe they're related to this trip. I see I have Republic noted here, and there are a couple of flights on Republic Airlines.

Mr. BRYANT. Well, our only objection, Mr. Chairman, is that there's a second page of the exhibit that, based upon what's been shown so far, seems to have no connection to the exhibit itself. That is to say, it wasn't part of the same file. We don't quite know what it is.

Mr. ANDERSON. Mr. Chairman, by agreement with the managers, we will admit only a one-page exhibit as Respondent's 97, the itinerary as it was typed.

Mr. BRYANT. We have no objection to that.

The CHAIRMAN. There's no objection to the single page that's now offered as Respondent's Exhibit 97. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 97 and was received in evidence.]

Mr. ANDERSON. Again, if I might approach the witness, Mr. Chairman.

The CHAIRMAN. You may.

Mr. ANDERSON. Ms. Williams, I show you what are marked Respondent's Exhibits 95 and 96, and would ask you just to examine it briefly and then tell the committee what they are.

Ms. WILLIAMS. Exhibit 95 is a composite of a file that I put together for Albany State College. It consists of a May 18, 1981, letter of acceptance by Judge Hastings, their May 13, 1981, letter inviting him to attend, and there's an additional letter giving him information regarding it as well as the program.

Mr. ANDERSON. And what is the other exhibit that you have there? Respondent's 96 I think it is.

Ms. WILLIAMS. 96 is a program. It contains the biographies of the various speakers that they were going to have at the program.

Mr. ANDERSON. And according to that information in those files, when was Judge Hastings scheduled to speak in Albany?

Ms. WILLIAMS. October 8, 1981.

Mr. ANDERSON. And is that reflected on his travel itinerary that you've already identified for October?

Ms. WILLIAMS. Yes, it is.

Mr. ANDERSON. And, again, is that an illustration of the process by which the judge made his speaking engagements and you maintained the records of them?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Mr. Chairman, I would move the admission of Respondent's 95 and 96.

The CHAIRMAN. Is there objection to those two exhibits?

Mr. BRYANT. Mr. Chairman, I understood counsel to say he was not going to—oh, excuse me. No objection to those exhibits, no.

The CHAIRMAN. They'll be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 95 and 96 and were received in evidence.]

Mr. ANDERSON. To confirm what I told Manager Bryant, I'm not going to move the admission of these, but I'd like this witness to authenticate them so the committee knows they exist, and we may later introduce portions.

Ms. Williams, I show you what has been marked Respondent's Exhibits No. 137 and 138, which are also marked Defendant's Exhibits 21 and 21A, and ask if you can identify those.

Ms. WILLIAMS. Exhibit 138 is the courtroom diary that I maintained. And Exhibit 137 is also a courtroom diary that I maintained.

Mr. ANDERSON. So one of those are the diary you maintained at your desk; is that correct?

Ms. WILLIAMS. And one for Judge Hastings' desk.

Mr. ANDERSON. And one for Judge Hastings'.

Now, in the ordinary course of your managing the chambers, those would be the diaries where the judge's travel plans, dental appointments or other matters that you scheduled would be entered?

Ms. WILLIAMS. Not in these. In the second set that I keep.

Mr. ANDERSON. Second set of diaries.

Ms. WILLIAMS. Right. This is for the courtroom.

Mr. ANDERSON. Those are for the courtroom?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Let me show you an exhibit that's been marked Respondent's Exhibit 136. Can you tell the committee what is Respondent's Exhibit 136?

Ms. WILLIAMS. The 136 is Judge Hastings' personal diary that I maintained.

Mr. ANDERSON. That is where the dental appointments and the travel and the rest of it, you would be keeping track of that?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. And you maintained those on a regular basis as systematically as you could throughout the year 1981?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. Now, do you know where the original of those diaries are now?

Ms. WILLIAMS. They may be in chambers. I'm not sure.

Mr. ANDERSON. The 1981 records?

Ms. WILLIAMS. There are several there. I'm not sure if they're 1981 or what, but there are several in chambers.

Mr. ANDERSON. Did there come a time when there were some records taken from the judge's chambers?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And for what year were those records?

Ms. WILLIAMS. In 1981.

Mr. ANDERSON. When was the last time you had a chance to examine the original 1981 records? Not the copies, but the little red books.

Ms. WILLIAMS. Before they took them or once——

Mr. ANDERSON. Well, when did they take them, if you know?

Ms. WILLIAMS. October 6th, the morning of October 6th.

Mr. ANDERSON. And when is the next time you saw them?

Ms. WILLIAMS. They returned them after the grand jury, after I testified at the grand jury. They were taken again for the trial, and FBI agents retrieved them once again for the judges in Atlanta.

Mr. ANDERSON. Were they returned after the judges from Atlanta were finished with them, if you recall?

Ms. WILLIAMS. I believe they were, yes.

Mr. ANDERSON. But, in any event, did you—while you've been here, have you examined those copies at my request?

Ms. WILLIAMS. Yes, I have.

Mr. ANDERSON. And are those true and accurate copies of the diaries as you maintained them?

Ms. WILLIAMS. Yes, they are.

Mr. ANDERSON. Mr. Chairman, I'm not moving their admission at this point on the basis of bulk, but I simply wanted to authenticate.

And I'll work with the managers as additional portions may be relevant.

Ms. Williams, I show you what's been marked Respondent's 135 for identification and ask if you can identify that.

Ms. WILLIAMS. Exhibit 135 is copies, various copies of travel itineraries and letters regarding speaking engagements.

Mr. ANDERSON. And do those appear to be records, copies of the kinds of records you maintained during the year 1981?

Ms. WILLIAMS. Yes, they do.

Mr. ANDERSON. Does the front of that, the front page of that bear any other markings?

Ms. WILLIAMS. Yes, it does.

Mr. ANDERSON. Would you tell the committee what they are?

Ms. WILLIAMS. Travel documents from Judge Hastings, 58-623-1133. It appears to be a grand jury, and IC-3013.

Mr. ANDERSON. So it bears, again, give them—it bears a grand—what is the grand jury marking?

Ms. WILLIAMS. Grand jury SUBF, 1B3.

Mr. ANDERSON. And IC what?

Ms. WILLIAMS. And IC-3013.

Mr. ANDERSON. Ms. Williams, at my request, did you examine the diaries and those records and such records that were available and attempt to reconstruct the judge's planned travel for the year 1981?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. Let me show you what has been marked Respondent's Exhibit No. 139 and ask if you can tell the committee what that is.

Ms. WILLIAMS. Respondent's Exhibit 139 is a list that I typed up of Judge Hastings' planned travel from January through October 1981.

Mr. ANDERSON. And is that, to the best as you can reconstruct it from the records and your own recollection, is that a summary of the scheduled travel the judge had during the year 1981?

Ms. WILLIAMS. Scheduled out-of-town travel, yes.

Mr. ANDERSON. Now, I take it that is based upon the scheduled travel, and can you testify whether all of those trips were made, from your own recollection or from the available records?

Ms. WILLIAMS. To the best of my recollection, yes.

Mr. ANDERSON. They were. But did the judge ever change his plans?

Ms. WILLIAMS. Occasionally, yes.

Mr. ANDERSON. So sometimes travel would be broken, canceled, or modified?

Ms. WILLIAMS. True.

Mr. ANDERSON. Did he always keep you faithfully informed?

Ms. WILLIAMS. Yes, he did.

Mr. ANDERSON. So you were able to keep your notes up to date?

Ms. WILLIAMS. Right.

Mr. ANDERSON. But to the best of your recollection, that is the planned travel schedule for the year 1981?

Ms. WILLIAMS. Yes, it is.

Mr. ANDERSON. Mr. Chairman, in the nature of a chart and a summary of the evidence, I would move the admission of Respond-

ent's 139. I do not have twenty-odd copies. I do have some spare copies, and we'll get them for the committee.

The CHAIRMAN. Is there an objection to Respondent's Exhibit 139?

Mr. BRYANT. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 139 and was received in evidence.]

The CHAIRMAN. Counsel, let me just clarify. Is this a schedule in anticipation of the trips that was prepared before the trips occurred, or a summary of trips after they occurred?

Mr. ANDERSON. Ms. Williams, am I correct that these are taken from the itineraries you prepared in anticipation of the judge's taking the trips?

Ms. WILLIAMS. Some of them were prepared from itineraries; some were just prepared from the diary. I didn't have copies of all the itineraries of everything that's on here.

Mr. ANDERSON. But if I understand Senator Bingaman's question, these are the ones which were the planned travel?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. Mr. Chairman, my failure to object or decision not to object was based upon the representation to me that this was an exhibit prepared for this hearing by Ms. Williams, and perhaps in consultation with counsel. It is not an exhibit that dates back to the time of the events being discussed but dates from the time of this hearing designed to set forth her testimony in graphic form.

Mr. ANDERSON. That's correct, yes.

Mr. BRYANT. I thought the question that Senator Bingaman asked and was answered sounded as though perhaps this was being represented as though she prepared it back at the time.

Mr. ANDERSON. If there's any confusion, we should clarify it.

When did you prepare that document, Ms. Williams?

Ms. WILLIAMS. Yesterday.

Mr. ANDERSON. And you prepared that based upon your itinerary or diary records of the travel the judge had planned to make during 1981?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. And this is just your summary of the judge's planned travel for that period; is that correct?

Ms. WILLIAMS. Yes, it is.

Mr. ANDERSON. But you prepared it yesterday.

Does that clarify it?

Mr. BRYANT. Could I raise one further question about it? The question would be whether this represents the trips actually taken or the trips only planned. The label at the top of it doesn't tell us either way.

Mr. ANDERSON. This represents the planned travel; is that correct?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. And so if the judge made a change midstream in his travel arrangements or something like that, this would not necessarily reflect it; is that correct?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Is that clear?

Mr. BRYANT. No objection.

The CHAIRMAN. The exhibit will be admitted.

Mr. ANDERSON. Ms. Williams, let me direct your attention backward a bit. Do you recall October 6, 1981, as we sit here today?

Ms. WILLIAMS. Yes, I do.

Mr. ANDERSON. And were you the person who typed an order that's been admitted into evidence in the case called *United States v. Romano?*

Ms. WILLIAMS. Yes, I am.

Mr. ANDERSON. Can you tell us to the best of your recollection at what point you were asked to type that order, what point in time of the day you completed it?

Ms. WILLIAMS. To the best of my recollection, the law clerk, Jeffrey Miller, approached me the day before—I guess it would be October 5th—and advised that he would have some typing for me the next day, and he went on to explain that it was about the *Romano* case. And I advised him at that time that I would be in late the following morning because my son had a dental appointment. And that was the extent of it.

The next morning when I came in—I came in late, I guess between 9:30, 10:00 o'clock—I went to Jeff and asked him if he was ready for me to start typing on the order.

Mr. ANDERSON. What happened then?

Ms. WILLIAMS. He gave me the portion that he had prepared. I typed it. I finished what he had given me. I went to the GSA store, went to lunch, came back, and typed the remainder of it.

Mr. ANDERSON. And what happened then?

Ms. WILLIAMS. We made corrections after I had finished typing it, and I guess I gave it back to Jeff around 4:00 o'clock in the afternoon.

Mr. ANDERSON. And after you gave it back to Jeff at 4:00, were there any further corrections?

Ms. WILLIAMS. I don't believe so. We were making changes as we went along. I don't believe there were.

Mr. ANDERSON. And did you see the order again? Or when was the next time you saw the order, if at all?

Ms. WILLIAMS. Grand jury, I believe.

Mr. ANDERSON. But you didn't see it again that day?

Ms. WILLIAMS. No, I didn't.

Mr. ANDERSON. Do you recall in the course of your discussions with Mr. Miller any instructions he gave you about the order or any conversations you had about the order concerning its urgency or any other matter?

Ms. WILLIAMS. If I recall correctly, Jeff said that he would have some typing for me to do the next day on an order, and he would like for me to type it and get it out. I don't recall him saying that it was urgent.

Mr. ANDERSON. Do you recall any other work, orders or other matters, you were working on that day?

Ms. WILLIAMS. No.

Mr. ANDERSON. Specifically.

Ms. WILLIAMS. No, I don't.

Mr. ANDERSON. Does that mean you weren't doing anything else that day or simply that you no longer recall what else was in chambers that day?

Ms. WILLIAMS. I just don't recall what else I was doing.

Mr. ANDERSON. Did you have any conversations with Judge Hastings in chambers about the *Romano* order that day?

Ms. WILLIAMS. None.

Mr. ANDERSON. Did you have any conversations with Ms. Carter that you recall?

Ms. WILLIAMS. Well, she knew that I was typing the order, yes. We sat in the same office.

Mr. ANDERSON. Is there anything specific that you recall about that?

Ms. WILLIAMS. No, I don't.

Mr. ANDERSON. Tell the committee about how in 1981 was the office set up.

Mr. BRYANT. Mr. Chairman, as far as the interruptions, it just occurred to me this might be an easier time for the respondent. I've just been notified of a vote. We're on the second bell.

The CHAIRMAN. We will recess while the House managers vote.

Mr. BRYANT. I'd like to make this offer, if it's not presumptuous. Our counsel is prepared to argue the issue of the previously excluded evidence. I'll be pleased to have that go forward in my absence if you wanted to do that in the next 10, 15 minutes. That's just an offer. I have no position about whether you should do it or not.

The CHAIRMAN. Is your counsel here?

Mr. BRYANT. Yes.

The VICE CHAIRMAN. Mr. Bryant, might I raise another question? The chairman and I have discussed this, and I know you have opposed having other counsel participate. But in light of the very heavy voting schedule—and I know there's nothing you can do about that—and in light of the time pressures we have, and in light, also of this particular witness, the thought on my mind is whether we might be able to proceed in your absence for the few minutes you'll be gone.

Mr. BRYANT. Well, the problem, Senator, is I'm going to cross-examine her, and I don't feel comfortable being out of the room when she testifies, presents her direct testimony. And that's generally the problem with many of the witnesses. The other managers have the responsibility for various witnesses.

The VICE CHAIRMAN. Well, I understand that. For the time you're gone, perhaps you might divide the cross-examination responsibilities. I have raised it only because we're all aware of the time constraints and the problems we have on scheduling here.

Mr. BRYANT. I understand. I mean, we are anxious to go forward. I said earlier to Senator Bingaman in the course of a conversation at the bar that it's important for us to emphasize to the members of the Senate we feel personally responsible for this case, and we will be held personally responsible for it and are not comfortable going forward with any significant part of it in our absence.

The CHAIRMAN. But you have no problem with us going forward with the argument on the prior excluded testimony; is that it?

Mr. BRYANT. With regard to the——

The CHAIRMAN. Is it the motion to strike the polygraph proffer? Is that what it is?

Mr. BRYANT. Inasmuch as it is only a legal argument, we're prepared to let that go forward.

The CHAIRMAN. We might interrupt the witnesses. You are excused to go vote at this point.

Mr. ANDERSON. Could I have 3 minutes or 5 minutes to get my materials out of my file?

The CHAIRMAN. Yes. Why don't we take about a 5-minute recess, and then we will reconvene in 5 minutes and hear counsel on that issue.

[Recess.]

The CHAIRMAN. The committee will come back to order.

Mr. ANDERSON. Mr. Chairman, do you want us to recall the witness, or do you want to hear argument?

The CHAIRMAN. I think we should use our time to hear the witness considering that we'd like to get as many witnesses heard as possible today. And the House managers are back, so why don't we recall Ms. Williams.

Mr. ANDERSON. Ms. Williams, while we're looking at some more exhibits and getting prepared for that, let me shift lines briefly.

How did you happen to go to work for Judge Hastings as his secretary?

Ms. WILLIAMS. A friend of mine referred me to Judge Hastings.

Mr. ANDERSON. And how long have you been with him now?

Ms. WILLIAMS. Since December of 1980.

Mr. ANDERSON. What had you done before you went to work for him?

Ms. WILLIAMS. I was a secretary.

Mr. ANDERSON. Legal secretary?

Ms. WILLIAMS. No.

Mr. ANDERSON. And over the nine years you've been with him, have you had a chance to form an opinion about his integrity and truthfulness?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And what is your opinion? Is he a truthful man?

Ms. WILLIAMS. I perceive Judge Hastings to be a very honest, caring individual.

Mr. ANDERSON. And when you say caring, what do you mean by a caring individual?

Ms. WILLIAMS. He's just kind-hearted. He's down to earth. He takes time—especially kids. He loves children. Whenever they come to the courtroom, he always takes time to chat with them. He's just a kind individual.

Mr. ANDERSON. Now, you've also had a chance to observe his life style and compare his work with how he spends his money and his time. Do you have an opinion about the importance that Judge Hastings attaches to money?

Ms. WILLIAMS. Well, I don't think that Judge Hastings is a very extravagant person. He lives at home with his mom.

Mr. ANDERSON. Have you met his mom?

Ms. WILLIAMS. Yes, I have.

Mr. ANDERSON. What can you tell us about her physical condition?

Ms. WILLIAMS. She gets around with the use of a walker.

Mr. ANDERSON. And what are her problems to the extent you've observed them or she told you?

Ms. WILLIAMS. Arthritis. She's missing one of her kneecaps, I believe the right one.

Mr. ANDERSON. And when was the last time you saw her?

Ms. WILLIAMS. Monday, July 16th, I believe.

Mr. ANDERSON. Before you came up here?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And when you observed her, did she appear to be in pain?

Ms. WILLIAMS. Well, she's always such a witty person. She never really complains. But when she greeted me at the door, she used her walker, as she always did. And when she got some information from me, she used her walker to go to the other room and back.

Mr. ANDERSON. Now, you've also had a chance to observe Judge Hastings in terms of meeting the schedules you lay out for him in terms of his work as a judge. Do you have an opinion as to how hard-working he is as a judge?

Ms. WILLIAMS. Yes. I feel that he is a very hard worker. On a number of occasions, he will go and speak at a school before he comes to work. He'll leave during lunch hour and go speak and come back to the bench. So, yes, I perceive him as being a hard worker.

Mr. ANDERSON. And are you familiar with his reputation for truthfulness and honesty in the south Florida community generally?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. What is that reputation?

Ms. WILLIAMS. I believe that it's one of respect and admiration for Judge Hastings.

Mr. ANDERSON. Ms. Williams, I show you what have been marked Respondent's Exhibit 100, 101, and 102 and ask if you can identify those.

Ms. WILLIAMS. Exhibit 100 is a copy of the court calendar for the period September 1 through October 30, 1981.

Exhibit 101 appears to be the same thing, copies of the second diary, court calendar.

Mr. ANDERSON. You say the second diary court calendar. What is that?

Ms. WILLIAMS. I maintained one on my desk, and I kept one on Judge Hastings' desk.

Mr. ANDERSON. OK.

Ms. WILLIAMS. And 102 is a copy of the personal diary from the period September 1 through November 1, 1981.

Mr. ANDERSON. Now, do those documents bear labels other than the respondent's exhibit number labels?

Ms. WILLIAMS. Yes, they do.

Mr. ANDERSON. And what are those labels?

Ms. WILLIAMS. Exhibit 100 also bears Defendant's Exhibit 21. Exhibit 101 has the Defendant's Exhibit 21A label on it. And Exhibit 102 has the Defendant's Exhibit 21B label on it.

Mr. ANDERSON. Mr. Chairman, we may present other materials out of these diaries, but we did want to get before the committee

today those portions that have been placed before the jury in the 1983 trial. For that reason, I would move at least these three segments today into evidence at this time.

The CHAIRMAN. Is there objection?

Mr. BRYANT. Mr. Chairman, we would not object subject to agreement from counsel to substitute the originals of all of these various diaries that have been offered. We have them. We can bring them over. We probably couldn't do it until Monday. But I think that would give us some more accurate——

The CHAIRMAN. Subject to that agreement, I could see no reason to object to that.

Mr. ANDERSON. Mr. Chairman, in fact, since we're going along so speedy, there are a lot of documents that we have put in copies where there may be originals that are more legible ones. And with the managers, I would be happy to work at the close of this.

The CHAIRMAN. Wherever counsel can agree to substitute originals, we would appreciate that, and the three exhibits will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 100, 101, and 102 and were received in evidence.]

Mr. ANDERSON. Mr. Chairman, I have no further questions of this witness at this time.

The CHAIRMAN. Representative Bryant, is there cross-examination?

CROSS EXAMINATION

Mr. BRYANT. Yes.

Ms. Williams, my name is John Bryant. I'm a member of the House of Representatives from Texas, and I'm one of the House Members that is presenting this case to the Senate.

I'd like to ask you first about the chambers that you used to occupy in the old courthouse. I understand now you occupy different chambers in a different building; is that correct?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. In the old courthouse chambers, referring to the chambers in which you worked in 1981, how many telephones were in those chambers?

[No response.]

Mr. BRYANT. Let me ask you this. Maybe I could help you answer that question this way. Was there a telephone in the judge's personal office?

Ms. WILLIAMS. Yes, there was.

Mr. BRYANT. Was there one at your desk?

Ms. WILLIAMS. Yes.

Mr. BRYANT. Was there one where the law clerks worked?

Ms. WILLIAMS. Yes.

Mr. BRYANT. Were there other phones as well?

Ms. WILLIAMS. The courtroom deputy, of course, had one, and I don't recall whether or not there was one in the courtroom. There may have been one in the courtroom at that time.

Mr. BRYANT. There wouldn't have been any others; is that correct?

Ms. WILLIAMS. No.

Mr. BRYANT. With respect to the telephones in the chambers, did each of those telephones have access to the Federal Telecommunications System; that is to say, FTS?

Ms. WILLIAMS. Yes.

Mr. BRYANT. Do you know if Judge Hastings knew how to use the FTS line?

Ms. WILLIAMS. Yes. So far as I know, he did.

Mr. BRYANT. OK. Now, was it your understanding and practice that you and other people working in the courthouse were to use the FTS line for long-distance calls whenever possible?

Ms. WILLIAMS. Yes.

Mr. BRYANT. With respect to calls made on the commercial lines—that is, the lines that were not the FTS lines—did you receive periodic bills for the long-distance calls for you to review and then send on to the administrative offices?

Ms. WILLIAMS. Sent to the clerk's office, yes.

Mr. BRYANT. Did you ever receive any bills for calls made on FTS?

Ms. WILLIAMS. No.

Mr. BRYANT. Are you aware of the fact that FTS does not keep a record of all calls that are made on that system?

Ms. WILLIAMS. I am now, yes.

Mr. BRYANT. Did there come a time when Judge Hastings told you that he believed his telephones might be tapped?

Ms. WILLIAMS. Yes.

Mr. BRYANT. When was this?

Ms. WILLIAMS. To the best of my recollection, it may have been early summer 1981. I don't specifically recall the time, the month.

Mr. BRYANT. When he told you that he believed his phones might be tapped, what did he tell you exactly?

Ms. WILLIAMS. I don't recall his exact words. He was telling me something about something that had occurred on his home phone, something that his mother had experienced, hearing a clicking and what have you. But I don't recall the specific conversation.

Mr. BRYANT. Do you recall having testified earlier that he told you, "Be mindful of our personal conversations"?

Ms. WILLIAMS. Yes, he did tell me that, yes.

Mr. BRYANT. Did that suggest to you that you should start speaking in your calls in veiled or coded terms?

Ms. WILLIAMS. No. He said for me to be—for me to tell the staff and myself that we should be mindful of our personal calls, personal conversations.

Mr. BRYANT. Because there might be eavesdropping going on; is that correct?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. Did the judge suggest that you start using telephones outside the office?

Ms. WILLIAMS. Never did.

Mr. BRYANT. In fact, did you or, to your knowledge, any other staff person use pay phones in the courthouse instead of office phones?

Ms. WILLIAMS. Not to my knowledge.

Mr. BRYANT. All right. Did Judge Hastings' warning to you about the possibility of a wiretap cause you to change your use of the office telephones in any way?

Ms. WILLIAMS. No.

Mr. BRYANT. Did he ever tell you why he thought the telephones in his chambers might be tapped?

Ms. WILLIAMS. Just what I said previously. He told me about an incident that had occurred at his home, the phones.

Mr. BRYANT. I guess I'm asking did he tell you why he thought someone might be tapping his phones.

Ms. WILLIAMS. I don't recall.

Mr. BRYANT. Did Judge Hastings indicate whether he thought the wiretapping that was taking place was a court-authorized wiretap or did he say it was an illegal wiretap?

Ms. WILLIAMS. I don't believe he mentioned that. I don't recall.

Mr. BRYANT. Did he go to the authorities about the suspicion?

Ms. WILLIAMS. I don't know.

Mr. BRYANT. Did he call in anyone to the office to sweep the phones to find out if there was a bug?

Ms. WILLIAMS. Not that I recall.

Mr. BRYANT. Now, was there also a public telephone in the corridor of the third floor of the courthouse in 1981?

Ms. WILLIAMS. Yes.

Mr. BRYANT. So if a previous witness, particularly Jeff Miller, testified that there was no pay phone in the courthouse, he would be wrong about that, wouldn't he?

Ms. WILLIAMS. There——

Mr. ANDERSON. Mr. Chairman, I object. The question's calling for speculation and a conclusion. Whatever Mr. Miller testified, he testified. Whatever this witness testified, the two transcripts can be compared, and the committee can draw its own conclusion. I don't think it need Ms. Williams' advice on testimony she didn't hear as to its truth or falsity.

The CHAIRMAN. We'll overrule the objection and allow the witness to respond if she has an opinion on the question.

Ms. WILLIAMS. I believe there was a phone on the third floor.

Mr. BRYANT. That's consistent with your prior testimony; is that not correct?

Ms. WILLIAMS. To the best of my recollection.

Mr. BRYANT. Do you know if Judge Hastings ever made telephone calls from public phones in the courthouse?

Ms. WILLIAMS. I never saw Judge Hastings using a public telephone.

Mr. BRYANT. There has been evidence offered in this hearing that on April 9, 1981, a telephone call was made from a pay phone in the courthouse near Judge Hastings' chambers to a pay phone in the Washington, DC, courthouse. I believe that that call was charged to the home of Judge Hastings.

Now, April 9th was long before there was any mention of the chambers' phones being tapped; isn't that correct?

Ms. WILLIAMS. I don't specifically recall when he called me in. I don't know exactly what month. I said maybe during the summer. I don't know. I don't recall.

Mr. BRYANT. You said early summer; is that correct?

Ms. WILLIAMS. Right, but I don't recall the month specifically.

Mr. BRYANT. In fact, in your previous testimony, I believe you identified the date of that as having been August.

Ms. WILLIAMS. But I probably also said that I believe. I don't know for sure. I never said that I knew exactly when he called me in.

Mr. BRYANT. In either case, April 9th would have been long before he had told you that he thought his phones were tapped; isn't that correct?

Ms. WILLIAMS. Yes.

Mr. BRYANT. Did Judge Hastings ever authorize you or any other staff member to charge long-distance calls to his home phone number?

Ms. WILLIAMS. No.

Mr. BRYANT. I'd like to ask you, if you would, to describe for the committee the layout of the rooms in Judge Hastings' chambers in 1981.

Ms. WILLIAMS. When you enter the chambers, you enter the reception area. To the right, the two law clerks—there were two offices to the right. Both law clerks occupied that office. And Judge Hastings was to the left, and the courtroom.

Mr. BRYANT. Now, was there a door leading directly to the outside hall corridor from Judge Hastings' personal office?

Ms. WILLIAMS. Yes, there was.

Mr. BRYANT. So Judge Hastings could leave his office without anyone in his chambers seeing him do so; is that correct?

Ms. WILLIAMS. Yes.

Mr. BRYANT. At the time in question, 1981, is it true that the files of active cases which were assigned to Judge Hastings were kept in the chambers?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. When someone other than a staff person wanted to see one of those official court files, what did they have to do to see the file?

Ms. WILLIAMS. The lawyer, whoever it was, just came into chambers and gave us the case number, and we would let him see the file.

Mr. BRYANT. But you had to go and get it; is that correct?

Ms. WILLIAMS. Right. We had to get the file.

Mr. BRYANT. Could the court files be removed from the chambers?

Ms. WILLIAMS. No, they could not.

Mr. BRYANT. To your knowledge, did a man named William Borders ever come to the chambers and ask to see any of those files?

Ms. WILLIAMS. Not to my knowledge.

Mr. BRYANT. Do you know William Borders?

Ms. WILLIAMS. I know who he is. I do not know him.

Mr. BRYANT. Other than answering calls from Mr. Borders at the judge's chambers, did you ever have any contact with Mr. Borders?

Ms. WILLIAMS. No, sir.

Mr. BRYANT. Did Judge Hastings usually place his own calls, or did he ask you to do so for him when he was making a call out of his office?

Ms. WILLIAMS. He normally placed his own. There were occasions when he asked me to get a number and make a call for him.

Mr. BRYANT. Well, did you ever get Mr. Borders on the line for Judge Hastings?

Ms. WILLIAMS. Not that I recall.

Mr. BRYANT. Asking again about William Borders, how often did William Borders call the chambers in 1981?

Ms. WILLIAMS. Maybe two or three times.

Mr. BRYANT. At the chambers, did you answer the telephone most of the time, you personally?

Ms. WILLIAMS. Primarily, yes.

Mr. BRYANT. To your knowledge, had Mr. Borders ever called you or any other staff person in the chambers asking about the *Romano* case?

Ms. WILLIAMS. Not to my knowledge.

Mr. BRYANT. Ms. Williams, to the best of your recollection during 1981 and prior to October 9, 1981, did you ever receive any telephone calls regarding the *Romano* case other than from attorneys directly involved in the case?

Ms. WILLIAMS. I believe the inquiries were only from the attorneys involved, but I can't be sure.

Mr. BRYANT. No one called asking for information as to the status of the *Romano* case?

Ms. WILLIAMS. Not to my knowledge.

Mr. BRYANT. If anyone outside the chambers did call and ask you whether an order had been issued regarding the *Romano* case, what would your response have been?

Ms. WILLIAMS. If an order had been signed, we would tell them. We would not tell them when we thought an order might be issued.

Mr. BRYANT. You would tell it was already signed and in the file?

Ms. WILLIAMS. Docketed, right. As long as it's been signed, we would tell them.

Mr. BRYANT. If you were asked by someone outside the chambers if an order was about to be issued, what would your response have been?

Ms. WILLIAMS. We'd tell them we have no way of knowing when the judge is going to sign an order.

Mr. BRYANT. Now, taking you to October 6, 1981—that is, with respect to the order in the *Romano* case, what you typed on October 6, 1981—did you tell anyone outside of chambers that you were working on it or that it would be issued?

Ms. WILLIAMS. No, sir.

Mr. BRYANT. With respect to the preparation of that order, when Jeff Miller, the law clerk, told you on October the 5th that he would be giving you a draft to type the following day, didn't he also tell you that he was telling you this so that you could clear some time to do the order?

Ms. WILLIAMS. He may have. I don't specifically recall the conversation, the entire conversation.

Mr. BRYANT. I'd like to show you the grand jury testimony which you offered I believe on October 15, 1981, at page 15, Lines 19 through 22.

The question was: "What Monday?" And your answer was, "Well, it would have been the 5th, October 5th. He said that he

would have some typing for me to do the following day, and he would like it if I could clear some time for it."

There's more of a response, but I believe that's the pertinent response. Does that sound like the words that you spoke to the grand jury?

Ms. WILLIAMS. If it's there, I said it. I just didn't recall every word that I said.

Mr. BRYANT. Based upon that, was it your impression that Mr. Miller wanted you to be able to complete the order the next day with some dispatch; that is, by the end of the day, the following day?

Ms. WILLIAMS. Yes.

Mr. BRYANT. And did you, in fact, spend most of your time on October 6th typing the *Romano* order?

Ms. WILLIAMS. Not necessarily, no. I typed the order, but as I testified earlier, I didn't come in until late. I went to the GSA store, which took maybe an hour. We went to lunch, and there were other things, duties, you know, that I had to perform. But as far as maybe typing, that may have been the only thing that I typed that day.

Mr. BRYANT. Prior to Jeff Miller telling you on October 5, 1981, that he would have a draft for you to type the following day, did you ever type an earlier draft of an order in the *Romano* case for Mr. Miller?

Ms. WILLIAMS. Yes, I did.

Mr. BRYANT. All right. Do you remember about when that was?

Ms. WILLIAMS. In July, I believe.

Mr. BRYANT. Now, between the time you typed this draft in July and when you typed the final order on October 6, 1981, did Mr. Miller ask you to prepare anything in the *Romano* case?

Ms. WILLIAMS. I don't believe so.

Mr. BRYANT. When you told the grand jury on October 15, 1981—which, by the way, was 10 days after Jeff Miller had talked to you about typing the order—that Jeff came back to you with the order "all of a sudden," did you mean that there had been no action on this matter so far as it concerned you since the time in July that you had typed the earlier draft?

Ms. WILLIAMS. I don't know what it was. Maybe it was just an expression that I used. I really don't know.

Mr. BRYANT. You do recall saying that he came back to you with the order "all of a sudden"?

Ms. WILLIAMS. Right. That was brought to my remembrance, yes.

Mr. BRYANT. When you typed the draft of an order in those days, normally how long would it be before you typed the final version of that order?

Ms. WILLIAMS. Well, it varies. I don't think it would be two or three months, but it varied.

Mr. BRYANT. OK. Was it unusual that you had typed the draft three months before you were asked to prepare the final draft, as in this case?

Ms. WILLIAMS. I had never done that before, no.

Mr. BRYANT. All right. So when Mr. Miller came to you on October 5, 1981, and asked you to type the final version of the *Romano* order, were you expecting him to do that?

Ms. WILLIAMS. No, I wasn't.

Mr. BRYANT. Now, I'd like to ask you this question: When orders were completed and signed in the courts, what was the usual way that the order was sent to the parties to the case?

Ms. WILLIAMS. What do you mean, the usual?

Mr. BRYANT. I'm referring to the mail. What was the usual way in which orders were sent to the parties to the case?

Ms. WILLIAMS. Well, the courtroom deputy handled that, but I'm not sure. She may have stamped special delivery on some of them at times. I can't answer that for her.

Mr. BRYANT. Well, you're anticipating, I guess, what I'm asking you about. I think you testified in your deposition that the normal way would be to send it out through normal first-class mail as franked mail; isn't that correct?

Ms. WILLIAMS. Right.

Mr. BRYANT. Did you type all of Judge Hastings' correspondence personally, you?

Ms. WILLIAMS. Yes.

Mr. BRYANT. And prior to October 9, 1981—I'd like to ask you this question—had you ever heard of Hemphill Pride?

Ms. WILLIAMS. Yes, I had.

Mr. BRYANT. And how did you know of Hemphill Pride?

Ms. WILLIAMS. I knew that he was a friend of Judge Hastings. He had mentioned him on occasions.

Mr. BRYANT. Do you recall whether on October 5 or 6, 1981 Judge Hastings asked you to write any letters which concerned Hemphill Pride?

Ms. WILLIAMS. No, I don't.

Mr. BRYANT. You don't recall or you know that he did not?

Ms. WILLIAMS. Oh, I don't—asked me to write any letters?

Mr. BRYANT. Yes.

Ms. WILLIAMS. No, he didn't.

Mr. BRYANT. Well, let me say it another way. Do you recall whether on October 5 or 6, 1981 Judge Hastings asked you to type any letters which concerned Hemphill Pride?

Ms. WILLIAMS. I don't recall that he did, no.

Mr. BRYANT. Do you recall that your testimony before the Investigating Committee was that he did not?

Ms. WILLIAMS. Isn't that the same thing? I don't recall that he asked me to type any letters?

Mr. BRYANT. Well, I don't wish to quibble. I'm only distinguishing between a response which would be that you don't know and a response which would be that, "No, he did not ask me to type any letters." And I believe that second response was the one you gave at the Investigating Committee. Do you recall having said that?

Ms. WILLIAMS. If it's in the transcript, I'm sure I said it. I don't recall any letters.

Mr. BRYANT. Do you recall ever having typed a letter by Judge Hastings that related to the difficulties that Hemphill Pride was having in gaining readmission to the South Carolina Bar?

Ms. WILLIAMS. No.

Mr. BRYANT. And do you recall typing any letter in which Judge Hastings made an appeal to his friends or to anyone else for financial assistance for Mr. Pride?

Ms. WILLIAMS. No.

Mr. BRYANT. Now, turning to Judge Hastings' travel arrangements, I believe you said that it was your responsibility to make reservations for him; is that correct?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. On occasions, I assume those arrangements would change, would they not?

Ms. WILLIAMS. They would.

Mr. BRYANT. Once the arrangements were made by you, you wouldn't necessarily know whether Judge Hastings actually followed the reserved itinerary; isn't that the case?

Ms. WILLIAMS. That's true.

Mr. BRYANT. So, for example, with respect to the flight that was booked for Judge Hastings on September 11, 1981, which was scheduled to depart from Miami at 3:48 p.m., you don't know whether that flight actually departed at that time or whether he took some other flight, do you?

Ms. WILLIAMS. No, I don't.

Mr. BRYANT. With respect to that travel arrangement in which Judge Hastings flew from Miami on September 11, 1981, to Washington, DC, do you know what Judge Hastings was doing in Washington that weekend?

Ms. WILLIAMS. No, I don't.

Mr. BRYANT. Finally, I'd like to ask you, thinking back to 1981, did you know of anything to suggest that Judge Hastings was in the market to purchase a home?

Ms. WILLIAMS. I believe a real estate agent had called the office on occasion.

Mr. BRYANT. I'd like to read to you from page 25, Lines 19 through 22, of the grand jury testimony that you offered on October 15, 1981. The question was: "To your knowledge, was the judge in the market to purchase a home recently?" Answer: "I recall him going to look at a home, yes."

Do you recall that testimony?

Ms. WILLIAMS. Yes.

Mr. BRYANT. Just a few more questions. You typed Jeff Miller's draft of the *Romano* order on the October 6th, I believe you testified a moment ago. I'd like to ask you, was that draft largely typed with some handwritten—that is to say, that draft was mostly typed but had some handwritten additions to it, did it not?

Ms. WILLIAMS. I don't think—there were some typewritten pages. I don't think the majority of it had been typed. I don't believe.

Mr. BRYANT. Were you familiar with Jeff Miller's handwriting by then after having worked there for a year?

Ms. WILLIAMS. Pretty much so, yes.

Mr. BRYANT. Do you recall having difficulty reading his handwriting on the *Romano* draft order?

Ms. WILLIAMS. I had to ask him some questions.

Mr. BRYANT. All right. We have no further questions at this time.

The Chairman. Is there redirect?

Mr. ANDERSON. Oh, just a little bit.

Ms. Williams, do you recall what the judge's schedule for travel was for the month of October 1981?

Ms. WILLIAMS. Yes, I do.

Mr. ANDERSON. OK. But was he going to be in the courthouse very much?

Ms. WILLIAMS. No, he wasn't; he was going to be away.

Mr. ANDERSON. Now, did you know, over the summer and over the course of the year, when Jeff Miller was scheduled to end his term as clerk for the judge?

Ms. WILLIAMS. Yes, I did.

Mr. ANDERSON. When was that?

Ms. WILLIAMS. The end of October.

Mr. ANDERSON. And had he originally been scheduled to go to the end of October or the end of September?

Ms. WILLIAMS. I believe it was the end of September, then the two judges got together and he decided to stay until the end of October.

Mr. ANDERSON. That was Judge Paine and Judge Hastings?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. When someone called in asking about the status of a case, would you answer it or would you refer it to someone else?

Ms. WILLIAMS. It depended on what the question was. If it was something that they just wanted to know whether or not an order had been signed, usually Marilyn and I would handle that. If it was something else, we would refer it to the law clerks.

Mr. ANDERSON. When you say Marilyn and you would handle that, how would you decide whether it was Marilyn or you?

Ms. WILLIAMS. Because Marilyn usually dealt with the attorneys, being the courtroom deputy, and they would usually call and ask for the courtroom deputy.

Mr. ANDERSON. OK. And if it was something more complex than that, what would happen?

Ms. WILLIAMS. I would refer it to a law clerk.

Mr. ANDERSON. OK. Most of the attorneys, when they were calling in, would they ask you about a case or would they just ask for Marilyn or one of the law clerks?

Ms. WILLIAMS. Ask for Marilyn or one of the law clerks.

Mr. ANDERSON. Ms. Williams, let's try and reconstruct it. After October 9th—do you recall October 9, 1981, the day that Mr. Borders was arrested?

Ms. WILLIAMS. Yes, I do.

Mr. ANDERSON. Where were you on that day? Were you in chambers?

Ms. WILLIAMS. I was not in chambers that afternoon, no.

Mr. ANDERSON. Where were you?

Ms. WILLIAMS. My son had an appointment that afternoon.

Mr. ANDERSON. OK. Did there come a time when you were interviewed by agents of the FBI?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. When was that?

Ms. WILLIAMS. On the evening of October 9th, at my home.

Mr. ANDERSON. And how many agents were there?

Ms. WILLIAMS. Two.

Mr. ANDERSON. And did there come a time when you were called to testify before the grand jury?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. And do you recall when that was?

Ms. WILLIAMS. I don't recall the date, no.

Mr. ANDERSON. And did there come a time when you were called to testify at the judge's trial?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And did there come a time when you were called to testify in Atlanta?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And who was that before?

Ms. WILLIAMS. Three appeals judges.

Mr. ANDERSON. Now, prior to going to Atlanta, had you been interviewed again by anyone?

Ms. WILLIAMS. Prior to going to Atlanta? No, I don't believe so.

Mr. ANDERSON. OK. Now, subsequent to testifying in Atlanta, has your deposition or have you testified since that time?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. And where was that?

Ms. WILLIAMS. In Miami, by the House of Representatives lawyers.

Mr. ANDERSON. And you are here today.

Ms. WILLIAMS. Yes, I am.

Mr. ANDERSON. OK. As you sit here and talk with this committee—and just be as careful and open as you can—how much of what you recall is what you said before or read before you said, and how much is what you really recall about what went on that year?

Ms. WILLIAMS. Not very much of it is what I actually recall. I've read and refreshed my memory, as I've tried to forget the whole event. I don't recall all the details, everything that happened. I've read testimony to refresh my memory.

Mr. ANDERSON. When you read the testimony—I'm trying to help the committee understand—are you refreshing, does that refresh your memory about what you said in the testimony, or does it refresh your memory about the underlying events?

Ms. WILLIAMS. Refresh my memory of what I said at the testimony.

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Mr. Bryant?

RECROSS EXAMINATION

Mr. BRYANT. Ms. Williams, I read to you a moment ago from the grand jury testimony which you offered on October 15, 1981. That was five days after the event, was it not?

Ms. WILLIAMS. Would you repeat the question, please?

Mr. BRYANT. The grand jury testimony which I read to you from was your grand jury testimony dated October 15, 1981. That would

have been five days after the event that brought us here today, isn't that correct?

Ms. WILLIAMS. That's right.

Mr. BRYANT. It would have been 10 days after you actually were asked by Jeff Miller to type the order, is that right?

Ms. WILLIAMS. Right.

Mr. BRYANT. And only nine days after you did type it, is that correct?

Ms. WILLIAMS. That's correct.

Mr. BRYANT. Do you have any reason to believe the grand jury testimony which you offered so soon after these events took place would be inaccurate?

Ms. WILLIAMS. No.

Mr. ANDERSON. I would like to ask you another question. Did Jeff Miller handle other cases other than the *Romano* case?

Ms. WILLIAMS. Yes, he did.

Mr. BRYANT. Did he come to you and ask you to reserve time to help finish up anything else other than the Romano order before he left?

Ms. WILLIAMS. No, he didn't.

Mr. BRYANT. OK. Ms. Williams, you have an exhibit in front of you, I believe it's 101, which on October 16th makes a reference to Bill Borders. I would like you to make reference to that point. Exhibit 101 is a copy of a diary, is that correct? Tell the committee what it is, what the exhibit is.

Ms. WILLIAMS. It is copies from the courtroom diary for the period September 1, through October.

Mr. BRYANT. Now, looking at the page for October 16, 1981, do you see in the bottom right-hand corner a notation?

Ms. WILLIAMS. Yes, I do.

Mr. BRYANT. What does it say?

Ms. WILLIAMS. Bill Borders, D.C. 10/9.

Mr. BRYANT. Do you know what that is?

Ms. WILLIAMS. Apparently—I don't know if it was originally scheduled for October 6th and it was changed to the 10th—that is what I would assume that it was, either that or I wrote it on the wrong date and then I marked through it and put 10/9.

Mr. BRYANT. Fine. Thank you very much.

Mr. ANDERSON. I have a brief re-redirect.

The CHAIRMAN. Why don't we follow our usual procedure, and that is to allow the committee now to ask questions, and then if there is some burning issue that still is unresolved, go ahead.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Let me ask one thing. Ms. Williams, did you ever, as part of your regular duties for the judge, help him to make dinner reservations or that sort of thing? Did he ever ask you if you would make a reservation for him some place when he had a dinner engagement?

Ms. WILLIAMS. I don't recall making any dinner reservations.

The CHAIRMAN. So, the night of the 16th September 1981, I believe the uncontested evidence before us is that the judge had dinner that evening at the Fontainebleau. But you know nothing

about that and were not asked to make a reservation for that dinner to occur?

Ms. WILLIAMS. That's correct, I don't know anything about it.

Mr. BRYANT. Now, the last notation that you were just asked about by Representative Bryant, could you clarify for me what that was? You indicated, I believe it is that exhibit right before you there, that you had written in an appointment that the judge had with Mr. Borders on the 9th of October, is that correct?

Ms. WILLIAMS. That's correct, it is on October—it's written on October 16th, I believe, and I marked through it and put 10/9.

The CHAIRMAN. But it was your marking on there?

Ms. WILLIAMS. Yes, it is.

The CHAIRMAN. So, can you look back and look at October 9th and see if you made a note there?

Ms. WILLIAMS. Yes, there was the date——

The CHAIRMAN. What does that note say?

Ms. WILLIAMS. Bill Borders. They were having an affair in Washington that date for him.

The CHAIRMAN. But it doesn't have a specific time or any indication——

Ms. WILLIAMS. Oh, no, that's just the event that——

The CHAIRMAN [continuing]. As to the nature of the meeting?

Ms. WILLIAMS. Right.

The CHAIRMAN. Just that there was some event on that date that involved Mr. Borders that the judge wanted to remember, is that correct?

Ms. WILLIAMS. Well, we had received correspondence in the office regarding it.

The CHAIRMAN. And that was the purpose, the main purpose for the trip that was scheduled to Washington——

Ms. WILLIAMS. That's correct.

The CHAIRMAN [continuing]. That you had made the reservations for?

Ms. WILLIAMS. That's right.

The CHAIRMAN. Senator Specter, did you have questions?

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Ms. Williams, have there been occasions or an occasion where Judge Hastings has written drafts, either opinions or letters, that he has given to you to type up?

Ms. WILLIAMS. Yes, there have been occasions.

The VICE CHAIRMAN. And are there occasions when he has done that while he was working on the bench during the course of a trial or a hearing or some proceeding in court?

Ms. WILLIAMS. Yes.

The VICE CHAIRMAN. Would it be customary for him to give you a draft which would be as long, say, as 6 pages, where he wrote it out by hand, without any mistakes or any crossovers or any deletions or substitutions?

Ms. WILLIAMS. I can't recall. There were occasions, I am sure, when there were strike marks, strikeovers on them, but normally, I would have to say no, he——

The VICE CHAIRMAN. Normally, there——

Ms. WILLIAMS [continuing]. There weren't any marks on it or crossovers.

The VICE CHAIRMAN. I ask you that, Ms. Williams, because I would like you to take a look at a document which has been marked as House Exhibit No. 154 and, after you have had a chance to examine it, I ask you if that is Judge Hastings' writing?

Ms. WILLIAMS. Yes.

The VICE CHAIRMAN. I have a copy before me and it consists of some 6 pages. Are there 6 pages, counting front as one and back as another, that you have before you?

Ms. WILLIAMS. Six.

The VICE CHAIRMAN. And would you confirm or state whether or not there are any deletions or strikeovers in the course of the 6 pages which Judge Hastings has written out there?

Ms. WILLIAMS. No.

The VICE CHAIRMAN. How long have you been Judge Hastings' secretary?

Ms. WILLIAMS. Since December of 1980.

The VICE CHAIRMAN. In the course of your work, can you recall ever having gotten 6 pages back with this kind of length, which is written out, without any strikeover or any crossout or any deletion or subtraction or addition?

Ms. WILLIAMS. To the best of my recollection, I would think that quite a few of them would be like this. He really, like I said, I don't really recall him making many marks on his papers, scratchovers. Yes, I would say that most of them would be like this.

The VICE CHAIRMAN. Didn't you just testify that he customarily would have deletions and strikeovers?

Ms. WILLIAMS. I said sometimes they would. There have been occasions when he had strikeovers on them.

The VICE CHAIRMAN. Your testimony under oath here is that it would be customary for him to write this much out on 6 pages, without one single strikeover or deletion?

Ms. WILLIAMS. There may have been one or two strikeovers on it, yes.

The VICE CHAIRMAN. But is there any here?

Ms. WILLIAMS. No. No.

The VICE CHAIRMAN. You don't find that unusual, highly unusual?

Ms. WILLIAMS. I don't, no.

The VICE CHAIRMAN. In response to a question from Representative Bryant, who read to you a transcript of a prior deposition, I believe you have testified that customarily items like orders went out regular mail?

Ms. WILLIAMS. Yes.

The VICE CHAIRMAN. To what extent, if at all, did such orders go out special delivery?

Ms. WILLIAMS. I can't answer that, because I don't know why she would send them out special delivery or when she did or on what occasions she would do that.

The VICE CHAIRMAN. But it would seem to you unusual, highly unusual to send something out special delivery?

Ms. WILLIAMS. It is difficult for me to answer that question, because I'm not the one who normally sent out the orders.

The VICE CHAIRMAN. Is there some record maintained as to when an order goes out special delivery, some notation?

Ms. WILLIAMS. There was no record, no.

The VICE CHAIRMAN. Are you familiar with the substance of these documents, Exhibit 154 which you just referred to, that these are the letters which Judge Hastings claims that he wrote on the bench on October 5, 1981?

Ms. WILLIAMS. Yes, I've seen them.

The VICE CHAIRMAN. Do you know the importance of these drafts in the case?

Ms. WILLIAMS. Yes.

The VICE CHAIRMAN. That this what Judge Hastings claims that he had written as the basis for the conversation which he then had with Mr. Borders?

Ms. WILLIAMS. Yes.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Senator Leahy, did you have any questions?

Senator LEAHY. Just briefly, Mr. Chairman.

You don't normally—I just want to make sure I understand it—you do not normally mail out judicial orders?

Ms. WILLIAMS. No, I don't.

Senator LEAHY. Do you ever mail them out?

Ms. WILLIAMS. I have mailed them out, yes.

Senator LEAHY. Do you ever mail out any special delivery?

Ms. WILLIAMS. No, I haven't.

Senator LEAHY. Had you ever seen any being mailed out special delivery? Have you ever heard anybody mention that they are going to mail one out special delivery?

Ms. WILLIAMS. I have sent the special delivery stamp on some of the envelopes, but I have never mailed any special delivery.

Senator LEAHY. Do you ever use a messenger service or anything like that?

Ms. WILLIAMS. No.

Senator LEAHY. But you had seen special delivery stamps on envelopes?

Ms. WILLIAMS. Yes, I have.

Senator LEAHY. Do you know whether those were judicial orders?

Ms. WILLIAMS. I assume they were.

Senator LEAHY. Do you know whether anybody in Judge Hastings' chambers knew Mr. Borders?

Ms. WILLIAMS. Not to my knowledge, never knew him.

Senator LEAHY. Do you remember a law clerk named Charlester Williams?

Ms. WILLIAMS. Yes, I do.

Senator LEAHY. Do you know whether he knew Mr. Borders?

Ms. WILLIAMS. I don't recall that he did.

Senator LEAHY. Do you recall——

Ms. WILLIAMS. I don't know that he did.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Other questions? Senator Rudman?

Senator RUDMAN. Ms. Williams, did you keep the judge's diary for social events, as well as business events?

Ms. WILLIAMS. What do you mean, social events?

Senator RUDMAN. You know, engagements with friends, going to a play with friends——

Ms. WILLIAMS. No, I did not.

Senator RUDMAN. You didn't do that at all?

Ms. WILLIAMS. No.

Senator RUDMAN. So, if the judge were going out of town, the only thing you would diary would be the official business, such as a speech or whatever that he was doing out of town, nothing else in the diary?

Ms. WILLIAMS. That's correct.

Senator RUDMAN. So, for instance, just taking a look at September 11, 1981, I assume that would contain what he was doing in Washington that weekend?

Ms. WILLIAMS. I just have it crossed through, which indicates that he would not be in the office that day.

Senator RUDMAN. Did he have any events on that weekend at all?

Ms. WILLIAMS. Not in the diary, I do not.

Senator RUDMAN. Where would you have?

Ms. WILLIAMS. I would have had probably in the travel file the itinerary, you know, the scheduling. I believe there was a file that had all of that information in it.

Senator RUDMAN. In any event, his personal social engagements, the judge did not put those in his diary?

Ms. WILLIAMS. No, I didn't put it in the diary.

Senator RUDMAN. Thank you.

The CHAIRMAN. Are there other questions? Senator Pryor?

Senator PRYOR. I will keep this real short, Mr. Chairman.

Ms. Williams, I'm fascinated—not fascinated, but I'm curious about this pay telephone down the hall from the judge's chambers. I don't know why I can't get away from that. I can't see a United States Federal District judge, who might or might not have been in his robes—I don't know whether he even wore robes—standing out there in the hall talking on a pay telephone, calling Washington, DC to another pay telephone. I can't construct a scenario where that would be foreseeable, especially with all the telephones that he had in his office.

If that in fact occurred—which I assume it did—would that sound strange to you?

Ms. WILLIAMS. Yes.

Senator PRYOR. Yes. Now, did you, in addition to doing his daily calendar of the day's events or week's events, did you also take care of his personal bill-paying, his charges or rent or utilities or phone bills? Did you do this for Judge Hastings?

Ms. WILLIAMS. Only to the extent of mailing them.

Senator PRYOR. Of what?

Ms. WILLIAMS. Mailing them, putting stamps on them and mailing them.

Senator PRYOR. So, you didn't have the opportunity from month-to-month, for example, to see his telephone bills from his home?

Ms. WILLIAMS. That's correct. That's correct, I did not.

Senator PRYOR. And, Ms. Williams, you did not—and I think you testified to this—you never saw Judge Hastings make a phone call from the pay telephone down the hall from the chambers

Ms. WILLIAMS. I did not.

Senator PRYOR. And do you recall ever hearing anyone on the staff, any of the law clerks or the secretaries or anyone saying to the effect that they had just seen Judge Hastings down making a call from a pay phone down the hall? Did you ever hear this, do you recall?

Ms. WILLIAMS. No, sir, I don't recall ever hearing that.

Senator PRYOR. All right. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there additional questions? Senator Lieberman?

Senator LIEBERMAN. Very briefly, Mr. Chairman.

Ms. Williams, did Judge Hastings ever dictate either case-related or non-case-related matters to you?

Ms. WILLIAMS. Yes, he did.

Senator LIEBERMAN. Did he do that more frequently than he hand-wrote or less frequently?

Ms. WILLIAMS. If it was a long opinion or order, he would dictate it on the transcription machine.

Senator LIEBERMAN. Right.

Ms. WILLIAMS. But if it was short, he would dictate it. I would say that he may have dictated more than he hand-wrote——

Senator LIEBERMAN. Yes.

Ms. WILLIAMS [continuing]. Use a Dictaphone, I mean.

Senator LIEBERMAN. Did he tend to—was there a pattern to the handwriting—I don't mean his handwriting style, but was he more likely to handwrite a certain kind of matter or less likely to handwrite another kind?

Ms. WILLIAMS. No, he tended to handwrite when he was sitting on the bench.

Senator LIEBERMAN. When he was sitting on the bench.

Ms. WILLIAMS. Yes.

Senator LIEBERMAN. Right. Otherwise, when he was back in the chambers, he would normally use the dictating machine or dictate to you directly?

Ms. WILLIAMS. That's correct.

Senator LIEBERMAN. When he hand-wrote, was it customary that he used both sides of the yellow legal pads?

Ms. WILLIAMS. I believe so, I can't be sure, but I think there are occasions when he wrote on both sides of the pad.

Senator LIEBERMAN. More often than not or——

Ms. WILLIAMS. I can't be sure. I know there were occasions when he used both sides of the paper.

Senator LIEBERMAN. Understood. We're focused so much on those letters, I do want to say that if Judge Hastings normally wrote on both sides of the yellow-lined legal pads, he is one of the most thrifty lawyers that I've ever met in my life. Normally, they write on one side of the pad.

OK. That's all the questions I have. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions? Senator Bond?

Senator BOND. Ms. Williams, going back to the weekend of May 8th, 9th, and 10th 1981, as you may imagine, we have had substantial discussion about the *Romano* case, and the attorneys—I believe Mr. Sonnett who was here could not remember whether he contact-

ed your office on that Friday to indicate he was going to seek a continuance for his clients on Monday.

Would you have received that call? Did you ever receive calls like that from attorneys? Did you ever handle them yourself? And, if so, did you ever—do you have any recollection of such a call from Mr. Sonnett?

Ms. WILLIAMS. I have no specific recollection of a call from Mr. Sonnett. There were calls all the time from lawyers seeking continuances, but I have no specific recollection of——

Senator BOND. Those would come to you?

Ms. WILLIAMS. I would answer the phone and I would refer it to the courtroom deputy who handles scheduling.

Senator BOND. So, the courtroom deputy would be the one who would know. You would not make a notation of it, you would refer that to the courtroom deputy?

Ms. WILLIAMS. That's correct.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any other questions of this witness?

[No response.]

The CHAIRMAN. Did counsel have an additional question to ask?

Mr. ANDERSON. Most of them have been covered. One I think might be helpful.

Ms. Williams, there are two points I want to cover with you. If you recall, when we talk about a special delivery stamp, was there a rubber stamp that you could put on an envelope to mark it "special delivery" in the office?

Ms. WILLIAMS. Yes, there was.

Mr. ANDERSON. And that was the kind of thing you put on an ink pad, just like that [indicating]?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. So, we're not talking about peeling a special stamp off a roll and sticking it on or writing it on by hand?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Now, again, Senator Specter asked you, did Judge Hastings, when he wrote things on the bench, is he a fussy writer in his first draft or not? It has become a matter of some importance, so, really, search your recollection. You've worked with my handwriting, there are a lot of scratchouts and things around. Comparing me to Judge Hastings, is that atypical specimen of writing, as far as you can recall?

Ms. WILLIAMS. As far as I can recall, it is.

Mr. ANDERSON. Typical or atypical?

Ms. WILLIAMS. I've always commented that, you know, he wrote very well as compared to you. [Laughter.]

Mr. ANDERSON. And did I understand you that one of the times that he would normally give you handwritten drafts was when he did work while he was in court presiding on the bench?

Ms. WILLIAMS. That's correct.

Mr. ANDERSON. Nothing further.

The CHAIRMAN. Let me just clarify with you, Ms. Williams, in response to Mr. Anderson's question, did you say that the 6-page document in front of you was typical of the way the judge wrote or atypical of the way the judge wrote?

Ms. WILLIAMS. That it was typical.

The CHAIRMAN. Is there any other question by counsel for the House?

Mr. ANDERSON. Could I have two more. I'm sorry, I forgot to consult with the judge and there are two more.

The CHAIRMAN. We will permit the additional questions.

FURTHER DIRECT EXAMINATION

Mr. ANDERSON. Ms. Williams, I think it's only two more. When Judge Hastings was traveling on his itinerary, was it his regular practice to call you at chambers to check in with you on what was happening?

Ms. WILLIAMS. Yes, he did.

Mr. ANDERSON. To your recollection, did he do that all the time?

Ms. WILLIAMS. To the best of my recollection, he did it frequently, yes.

Mr. ANDERSON. Do you recall many business days going by when he did not call in to check in at least once?

Ms. WILLIAMS. No, he would call to find out if we needed him for anything.

Mr. ANDERSON. And when lawyers or others would call in to ask about something, ask for someone, did they identify who they were, typically to you?

Ms. WILLIAMS. Not if they didn't just call and ask specifically for one of the law clerks or specifically for Marilyn, no.

Mr. ANDERSON. OK. So, if I were to call and inquire, if I had called you in 1981 and said could I talk to Jeff Miller, would you ask me who I was?

Ms. WILLIAMS. No, I wouldn't.

Mr. ANDERSON. You would just put me through. If I asked for Marilyn, would you——

Ms. WILLIAMS. I would put it through.

Mr. ANDERSON. OK. And that was at a fairly frequent occurrence?

Ms. WILLIAMS. Yes.

Mr. ANDERSON. Thank you.

The CHAIRMAN. Senator Burns had some questions.

FURTHER EXAMINATION BY THE COMMITTEE

Senator BURNS. Ms. Williams, are you—I know in your business that you grow very familiar with different phone voices of different folks; were you familiar with Mr. Borders' phone voice?

Ms. WILLIAMS. No, sir, I wasn't.

Senator BURNS. Would you recognize him when he called you on the phone?

Ms. WILLIAMS. I would not.

Senator BURNS. Did he, by any chance, on September 12th, call you looking for Judge Hastings, do you recall?

Ms. WILLIAMS. To be honest, I don't recall, no.

Senator BURNS. Thank you very much.

The CHAIRMAN. Did the House managers have any additional questions of this witness?

Mr. BRYANT. No, Mr. Chairman, we don't.

The CHAIRMAN. Is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. If not, this witness is excused. We very much appreciate your testimony, Ms. Williams.

Would counsel for Respondent call his next witness.

Mr. ANDERSON. Mr. Chairman, could I have three minutes? One of my contingent witnesses is in the office and I am trying to estimate what time we might get to him so he can go back to his own office and return, so if I could just rush out for a moment.

The CHAIRMAN. You may do that. I should advise counsel that we have—and we have earlier advised you that we have subpoenaed or advised Mr. Borders to return here at 4:00 o'clock, at which time we would question him. Obviously, it doesn't have to be exactly at 4:00, but we have about a half hour between now and then which we would like to use as profitably as possible.

Mr. ANDERSON. Mr. Chairman, in order to facilitate that, we will have Mr. Borders. My definite witnesses for today are Shirley Pride and Marilyn Carter. My contingent stand-by witnesses were Kenneth Robinson and Roger Spaeder. Is it the pleasure of the committee that we try and make it through Ms. Pride and that I work the contingent ones in next week, or should we push onward? I'm just trying to advise the——

The CHAIRMAN. It's the pleasure of the committee that we push onward and hear whatever witness you have available now and then, as soon as Mr. Borders is finished with his testimony, we would push on with the remainder of your witnesses.

Mr. ANDERSON. We will call Marilyn Carter.

The CHAIRMAN. Raise your right hand, please.

Do you, Marilyn Carter, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. CARTER. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF MARILYN P. CARTER

DIRECT EXAMINATION

Mr. ANDERSON. Ms. Carter, please tell the committee your full name?

Ms. CARTER. Marilyn Pratt Carter.

Mr. ANDERSON. And where are you employed?

Ms. CARTER. United States District Court, Southern District of Florida.

Mr. ANDERSON. What is your position?

Ms. CARTER. Courtroom Deputy Clerk.

Mr. ANDERSON. And in that capacity, are you employed by the Clerk for the Southern District of Florida?

Ms. CARTER. Yes, I am.

Mr. ANDERSON. And what is your assignment?

Ms. CARTER. I'm assigned to work in Judge Hastings' courtroom.

Mr. ANDERSON. And how long have you been assigned to do that work?

Ms. CARTER. Since November of 1979, when he was appointed to the bench.

Mr. ANDERSON. Directing your attention immediately to the events of October 6, 1981, do you recall mailing out an order that day in a case entitled *United States* v. *Romano*?

Ms. CARTER. Yes, I do.

Mr. ANDERSON. Could you tell the committee what happened?

Ms. CARTER. Once Betty was finished typing the order and the order was ready for the judge's signature, he signed it. I photocopied it and put it in the envelopes to go out.

Mr. ANDERSON. And what, if any, instructions did the judge give you concerning that letter?

Ms. CARTER. He asked me if I would be kind enough to mail it that day since it was almost 6:00 o'clock in the evening, and he knew that I had completed my work for the day.

Mr. ANDERSON. And do you recall, as you sit here today, whether or not you sent it out special delivery?

Ms. CARTER. Yes, I do recall putting a special delivery sticker on it.

Mr. ANDERSON. Now, was it unusual for you to send things out special delivery? What is the norm in chambers in terms of mailing?

Ms. CARTER. The norm is regular mail, but I use my own discretion, and I put a special delivery sticker on it whenever I desire.

Mr. ANDERSON. Do you recall whether you did that on your own discretion or whether Judge Hastings asked you to do it?

Ms. CARTER. I did it of my own discretion.

Mr. ANDERSON. Do you recall whether you had received any calls about the Romano order?

Ms. CARTER. Yes. Counsel did call at least on two occasions inquiring if it had been completed, and was it signed yet.

Mr. ANDERSON. And do you recall whether the counsel who called you was Mr. Deichert or Mr. Sonnett?

Ms. CARTER. I don't recall which one it was.

Mr. ANDERSON. But you do recall that it was one of the counsel in the case?

Ms. CARTER. Yes. Yes.

Mr. ANDERSON. And had those calls come within a fairly short period of time prior to October 5th?

Ms. CARTER. Yes.

Mr. ANDERSON. And would those calls and counsel's interest, as a courtesy, would they induce you to send it special delivery?

Ms. CARTER. No, but because they had called, I thought that it was something they were anxiously awaiting to receive, and I thought special delivery would help it get there faster.

Mr. ANDERSON. And that, to the best as you can reconstruct it today, is why you sent that order special delivery?

Ms. CARTER. Yes.

Mr. ANDERSON. Now, let me direct your attention to how did you—what were your responsibilities of the deputy clerk for Judge Hastings' courtroom?

Ms. CARTER. I took care of scheduling all hearings and trials that were to take place before Judge Hastings by way of sending out notices. I was responsible for sending copies of any orders that he had

signed out to all parties, shuffling papers between the clerk's office and chambers.

Mr. ANDERSON. And as a practical matter, how did you keep track of the schedule?

Ms. CARTER. I had a diary for 1981 that I maintained with all of the hearings and trials that were scheduled.

Mr. ANDERSON. Now, during the year 1981, were you working throughout the year in the judge's chambers?

Ms. CARTER. Excuse me?

Mr. ANDERSON. Were you working all year long or did——

Ms. CARTER. No. No. I was out of the office for a period of time.

Mr. ANDERSON. Why were you out of the office?

Ms. CARTER. I was on maternity leave.

Mr. ANDERSON. And do you recall what period you were out of the office?

Ms. CARTER. From February 1, 1981, until June 1, 1981.

Mr. ANDERSON. And who filled in for you during that period?

Ms. CARTER. A deputy clerk by the name of Felicia Wilkinson.

Mr. ANDERSON. Now, directing your attention to—just to get a couple of points out of the way, were you the deputy courtroom clerk in September 1985?

Ms. CARTER. Yes, I was.

Mr. ANDERSON. Do you recall whether Judge Hastings had a trial pending scheduled on the day of September 6, 1985, as you sit here?

Ms. CARTER. Independently, no, I don't.

Mr. ANDERSON. If I were to show you a courtroom diary, would you be able to refresh your recollection and tell the committee what was scheduled?

Ms. CARTER. Yes, I would.

Mr. ANDERSON. Mr. Chairman, I have no intention—may I approach the witness and show her this book?

The CHAIRMAN. You may.

Mr. ANDERSON. Ms. Carter, I show you what's been marked as Respondent's Exhibit Number 142, and ask you if you can identify it?

Ms. CARTER. Yes. This is the court diary where I kept times that Judge Hastings was in court in 1985.

Mr. ANDERSON. And is that book typical of the kind of diaries you maintained year in and year out?

Ms. CARTER. Yes.

Mr. ANDERSON. I would ask you—direct your attention to the entries for the day of September 6, 1985, and ask you to review those entries, and having done so, ask if you could now tell the committee what judicial business was scheduled for the judge on Friday, September 6, 1985?

Ms. CARTER. According to the diary, Judge Hastings was involved in a criminal jury trial that we had resumed. He also had sentenced three individuals that afternoon.

Mr. ANDERSON. And what time was the jury trial scheduled to resume?

Ms. CARTER. 10:30 in the morning.

Mr. ANDERSON. And what was the name of that case, if you can tell?

Ms. CARTER. *United States* v. *Brutus*.

Mr. ANDERSON. Now, on the subject of—while we're still in 1985, it might aid the committee if you could tell them how sealed records were handled? If the judge, in connection with a Title III surveillance, or for some other reason, entered an order sealing records, what would happen to that?

Ms. CARTER. Once it was reviewed or signed by Judge Hastings, I then made whatever copies were necessary, distributed those, and placed it in a special envelope, and hand carried it down to the clerk in the clerk's office that would, I presume, take it to the vault from there.

Mr. ANDERSON. OK. Now, who typically would give—who would bring you the order once the judge had signed it? Did he carry those out himself?

Ms. CARTER. Occasionally.

Mr. ANDERSON. Did other people carry them too?

Ms. CARTER. I, myself, would retrieve them.

Mr. ANDERSON. And did the U.S. Attorneys or others bring them to you also?

Ms. CARTER. Once they had been signed?

Mr. ANDERSON. Yes.

Ms. CARTER. No.

Mr. ANDERSON. And when you say you made copies for distribution, to whom would you distribute copies?

Ms. CARTER. Well, if it was a Title III order, I would make the copies and give them only to the U.S. Attorney.

Mr. ANDERSON. And then you would put it in an envelope and carry it down. Do you remember the name of the person you gave it to?

Ms. CARTER. No. In 1985, I don't recall who was there.

Mr. ANDERSON. But that was the standard practice; is that true?

Ms. CARTER. Yes.

Mr. ANDERSON. Now, by 1985, were you in the new court facility or still in the old one?

Ms. CARTER. Yes, we were.

Mr. ANDERSON. Now, in preparation for today, have you reviewed the testimony you gave before the grand jury?

Ms. CARTER. Yes, I have.

Mr. ANDERSON. And have you reviewed the report, the FBI 302 memoranda of the FBI agents who interviewed you?

Ms. CARTER. Yes, I have.

Mr. ANDERSON. And in light of those reviews and searching your recollection, is the testimony you've given the committee today, regarding the events of October 6th, your best recollection?

Ms. CARTER. Yes, they are.

Mr. ANDERSON. All right. Now, Ms. Carter, let me take you to October 9, 1981, Friday. Do you recall anything special about that day?

Ms. CARTER. Yes, I do.

Mr. ANDERSON. What happened and what time did it happen?

Ms. CARTER. I had taken a late lunch that afternoon because Betty, his secretary, was out of the office, so I ended up going to lunch late.

When I returned at about 2:00 in the afternoon, the office was full of a lot of gentlemen, and I didn't know who they were, but I know I had never seen that many people in there at once. Before I could even approach my desk to sit down, they inquired of who was I, and once they found out who I was, they told me who they were, and——

Mr. ANDERSON. And who did they tell you they were?

Ms. CARTER. That they were from the FBI.

Mr. ANDERSON. And what else did they—as best you can, take it a step at a time now, as it unfolded before your eyes.

Ms. CARTER. They indicated that they wanted to ask me some questions, as well as the other staff members that were present that day. They proceeded to separate us in different parts of the office, as well as the courtroom.

Mr. ANDERSON. When you say they proceeded to separate you, where did they take you?

Ms. CARTER. They took me into Judge Hastings' chambers, in his inner office.

Mr. ANDERSON. OK. And do you recall who took you in there?

Ms. CARTER. No, I don't.

Mr. ANDERSON. And then what happened?

Ms. CARTER. They proceeded to ask me questions about the order and things that had happened a few days before when the order was being prepared.

Mr. ANDERSON. And how long did that interview last?

Ms. CARTER. It was quite a while. I'd say more than half-an-hour.

Mr. ANDERSON. And then what happened?

Ms. CARTER. They, as they were asking me questions, they were flipping through the calendar that was on his desk, the little daily calendar, and when they had a question about a specific date, they'd turn to that date on his calendar, I guess to see if there were any notes written by him on that desk calendar.

Mr. ANDERSON. Now, did they ask your permission before they did that?

Ms. CARTER. No.

Mr. ANDERSON. And what happened when they finished flipping through the calendars and asking you such questions as they wanted to ask you? What happened next?

Ms. CARTER. As far as I can recall—I don't know at which point they gave me a subpoena that had Betty Williams' name on it, but it had documents listed, and they indicated that they needed to take all of those things with them.

Mr. ANDERSON. Well, now, by that time, I take it, they knew you weren't Betty Williams; is that correct?

Ms. CARTER. Right.

Mr. ANDERSON. Had they asked you where Ms. Williams was?

Ms. CARTER. Yes.

Mr. ANDERSON. And when they gave you the subpoena, what specifically did they tell you?

Ms. CARTER. I have no idea. I don't remember.

Mr. ANDERSON. What happened? They gave you the subpoena, and what happened next?

Ms. CARTER. They wanted me to gather the documents that were listed on the subpoena so that they could take them when they left.

Mr. ANDERSON. And what did you do?

Ms. CARTER. I began trying to gather everything that was listed.

Mr. ANDERSON. Were you under the impression that, from what they said, that you had any choice in the matter?

Ms. CARTER. No.

Mr. BARON. Objection.

The CHAIRMAN. What is the basis for the objection?

Mr. BARON. Never mind. I withdraw the objection.

The CHAIRMAN. The witness can go ahead and respond.

Ms. CARTER. No, I was not.

Mr. ANDERSON. Had they finished—were you still kept separate from the other law clerks in the chambers? Were they keeping you apart or were you now back together?

Ms. CARTER. The other law clerks were still being questioned, as far as I can recall. There may have been one that was in the office with me at the time.

Mr. ANDERSON. Who would that have been?

Ms. CARTER. Barbara Katzen.

Mr. ANDERSON. Who was present, besides yourself, in Judge Hastings' chambers on that day?

Ms. CARTER. There were several interns present, Barbara Katzen, Dan Simon, Joanne Tyson, and myself.

Mr. ANDERSON. And did there come a time when Magistrate Palermo came to chambers?

Ms. CARTER. Yes, he did.

Mr. ANDERSON. Do you know who called him?

Ms. CARTER. I believe Joanne asked him if he would come over.

Mr. ANDERSON. And were you present when he arrived? Did you see him converse with the FBI?

Ms. CARTER. Yes, I did.

Mr. ANDERSON. Do you recall what he said to them and what they said to him?

Ms. CARTER. No. I could not hear the conversation, but I could see that they were gesturing for him to leave from the office.

Mr. ANDERSON. And did Magistrate Palermo appear calm, upset, how did he appear?

Ms. CARTER. Well, he seemed concerned. He had a worried look on his face, but he wasn't angry or upset.

Mr. ANDERSON. Did Magistrate Palermo speak to you at all?

Ms. CARTER. He did not.

Mr. ANDERSON. Did the FBI agents—did you approach Magistrate Palermo?

Ms. CARTER. I did not.

Mr. ANDERSON. And then what happened?

Ms. CARTER. Well, during the course of me trying to find the documents that they wanted, several people from the public attempted to enter the office to see various files, and they asked them if they would not come in. They would not permit anyone to come into the office.

Mr. ANDERSON. Did they make any exceptions to that rule, or did they—I mean, how did they handle—who was at the reception desk that people wanted to come into Judge Hastings' chambers that day?

Ms. CARTER. Who was there?

Mr. ANDERSON. Yes.

Ms. CARTER. Myself and Barbara.

Mr. ANDERSON. No. But after the FBI arrived, who was—if people came into the office, who told them not to come in or would they please come in.

Ms. CARTER. The agents; they directed the persons back out of the office. They would not let them stay.

Mr. ANDERSON. And overall, how long did the agents remain in chambers?

Ms. CARTER. I really don't recall. A couple of hours it seemed like.

Mr. ANDERSON. And when they left, what, if anything, did they take with them?

Ms. CARTER. They took several diaries, several desk calendars, I don't recall if they took any, anything else.

Mr. ANDERSON. Did they leave a receipt for what they had taken?

Ms. CARTER. No, other than an inventory that I attempted to make.

Mr. ANDERSON. Mr. Chairman, may I approach the witness?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Ms. Carter, I show you what's been marked Respondent's Number 141 for identification. Can you identify that?

Ms. CARTER. It appears to be a copy of the 1981 diary that I would have kept the court schedule in.

Mr. ANDERSON. Now, am I correct you would have kept that diary for all periods, except during the time you were on maternity leave?

Ms. CARTER. Right, and someone maintained it in my absence.

Mr. ANDERSON. And you would have been the person, apart from that block of time, from February to June, you would have been the person primarily responsible?

Ms. CARTER. Yes.

Mr. ANDERSON. For maintaining that document; is that correct?

Ms. CARTER. Yes.

Mr. ANDERSON. Do you at this time, Ms. Carter, recall what the judge was scheduled to be doing on October 5, 1981?

Ms. CARTER. No, I don't.

Mr. ANDERSON. Were you to examine the entries for October 5, 1981, might you be able, then, to tell the committee what the judicial schedule for him was?

Ms. CARTER. Yes.

Mr. ANDERSON. Could I ask you to do that?

Ms. CARTER. According to the diary, we were involved in a criminal trial, and we were resuming at 9:30, and the judge had a status conference set at 12:00 noon that day.

Mr. ANDERSON. And what, if anything, did he have scheduled for the afternoon?

Ms. CARTER. There's no indication of anything being scheduled in the afternoon, which means that he intended to run straight through with the trial all day.

Mr. ANDERSON. So if I understand your testimony, as you understand the schedule, he was scheduled to be in jury trial all evening or all day?

Ms. CARTER. Yes. Yes.

Mr. ANDERSON. With an additional status conference scheduled during the noon recess; is that correct?

Ms. CARTER. Correct. Yes.

Mr. ANDERSON. And was that an abnormal day for the judge?

Ms. CARTER. No.

Mr. ANDERSON. If I could direct your attention to the week of September 7th through 11th, could you see if that refreshes your recollection, and you might aid the committee in telling what events, what judicial events were scheduled for that week?

Ms. CARTER. What was the beginning date?

Mr. ANDERSON. The Monday I think, September 7th, something like that.

Ms. CARTER. The 7th, OK.

According to the diary, there was nothing scheduled on that Monday. However, that Tuesday, he was scheduled to begin a trial and have several other hearings during the day on the 8th.

Mr. ANDERSON. Is there any estimate as to how long the trial was to take?

Ms. CARTER. Four days.

Mr. ANDERSON. And what was the name of that case?

Ms. CARTER. *United States* v. *Vicnair, et. al.*

Mr. ANDERSON. I take it that would have been a multiple defendant criminal case?

Ms. CARTER. Yes.

Mr. ANDERSON. And is there any indication whether that was a jury or non jury case?

Ms. CARTER. Jury.

Mr. ANDERSON. And that was scheduled to begin on Tuesday and run for four days?

Ms. CARTER. Yes.

Mr. ANDERSON. Now, had you returned from your maternity leave by July?

Ms. CARTER. Yes, I had.

Mr. ANDERSON. Could you look at July 8th and tell us what was on the Judge's schedule for that day?

Ms. CARTER. He had several hearings scheduled that day, status conferences, and sentences.

Mr. ANDERSON. Well, specifically, could you tell what the scheduled events for that day were so that the committee can see what his day looked like?

Ms. CARTER. 9:00 o'clock, he had a status conference in a criminal case.

Mr. ANDERSON. What was the name of that case?

Ms. CARTER. *United States* v. *Accardo.*

Mr. ANDERSON. Um-hum.

Ms. CARTER. 10:00 o'clock, a sentencing, it says T. and F. Romano.

Mr. ANDERSON. Um-hum.

Ms. CARTER. 10:00 o'clock, sentencing *U.S.* v. *Pomerantz.*

Mr. ANDERSON. Now, is it uncommon for you to set up more than one event for the same time?

Ms. CARTER. No, it's not, because nine times out of ten, they called and asked if we could cancel, and we would have an open block. So I tried to duplicate.

At 10:30, two defendants were to be sentenced, Shaw and Monfree. At 10:30, motion to mitigate sentence, *U.S.* v. *Wilson,* and that's it for the day.

The CHAIRMAN. Counsel, just for my own benefit, could you explain what the relevance of this testimony is?

Mr. ANDERSON. Well, the relevance is July 8th is the day that Tom and Frank Romano were sentenced. It is to illustrate to the committee that Judge Hastings was not—that *Martino* and the consequences of the pending post trial motions were not the only matters that Judge Hastings had to be briefed on and prepared before he took the bench that day. Much has been made of the transcript of the proceedings in the *United States* v. *Romano,* and it sometimes tends to fall out as though this were the only thing the judge could conceivably have had on his mind.

As I count it, there are about five defendants to be sentenced, one status conference, and a couple other things he had going that morning.

Now, just to confirm, insofar—during the periods when you were on duty, that diary was maintained in accordance with your customary practices to reflect the schedule of the judicial business in the court; is that correct, Ms. Carter?

Ms. CARTER. Correct.

Mr. ANDERSON. Might I have a moment, Mr. Chairman?

The CHAIRMAN. You may.

Mr. ANDERSON. Could you explain to the committee, what kinds of forms and reports you prepare to keep track, after the fact, of what a judge has done during the month?

Ms. CARTER. I am required to submit monthly a JS-10 report, which reflects all of the time that he spent on the bench in trial and other hearings, civil and criminal.

Mr. ANDERSON. Now, I take it, that is a form which lists out by actual case name and number the cases that have come where the judge has presided on the bench; is that correct?

Ms. CARTER. Correct.

Mr. ANDERSON. And that accounts for his time in the court, the actual time spent in the courtroom, as near as it can be estimated?

Ms. CARTER. Yes, it does. Right.

Mr. ANDERSON. What other records are you required to submit?

Ms. CARTER. I'm also required to submit a criminal report, which indicates all of the criminal cases that have been filed, as well as those that have been disposed of during the month, as well as a civil report.

Mr. ANDERSON. And those are all submitted as part of the same packet?

Ms. CARTER. Yes.

Mr. ANDERSON. Typically, you attach it to the—what you referred to as the HS——

Ms. CARTER. JS-10.

Mr. ANDERSON. JS-10. And that is sent to the court administrator for whatever they do?

Ms. CARTER. Right.

Mr. ANDERSON. And from those records, anyone who wanted to examine, after the fact, what the judge had done, in terms of what cases were before him, and how much time he spent in the court-

room, which courtroom he sat in over the month, they could determine it by examining those records?

Ms. CARTER. Exactly.

Mr. ANDERSON. Now, were those or comparable forms in use in 1981?

Ms. CARTER. Yes.

Mr. ANDERSON. So those records are all there and available? Do you know what the court administrator does with them?

Ms. CARTER. I know that he combines everything for the whole district and sends a package up to the administrative office for each month.

Mr. ANDERSON. The administrative office is where?

Ms. CARTER. In Washington.

Mr. ANDERSON. Could I have just a moment, Mr. Chairman?

The CHAIRMAN. You may.

Mr. ANDERSON. Ms. Carter, do you recall, what was then now, and I think may still be, the Haitian refugee case, the National Council of Churches?

Ms. CARTER. Yes, vaguely.

Mr. ANDERSON. Do you recall that as having been pending in 1981?

Ms. CARTER. Yes.

Mr. ANDERSON. Let me ask you, do you recall that as a case which consumed a good bit of the court's time and energy during these periods?

Ms. CARTER. Yes, it did.

Mr. ANDERSON. And do you know which law clerk was working on that case?

Ms. CARTER. I don't recall. I know that even—I know it was an even case number. So whichever law clerk was handling the even case numbers at that time.

Mr. ANDERSON. Would have been the clerk working on that case?

Ms. CARTER. Yes.

Mr. ANDERSON. And do you recall what day the final order in that case was issued?

Ms. CARTER. I have no recollection.

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Let me ask counsel for the House managers, how long do you expect to take in cross-examination of this witness?

Mr. BARON. Mr. Chairman, I would expect it would be about half-an-hour to 45 minutes, certainly half-an-hour.

The CHAIRMAN. In light of that, I think that we had directed Mr. Borders to return at 4:00, and I would at this time, I guess, interrupt the testimony of this witness and bring the witness back after Mr. Borders has testified. I think that would be more appropriate, because if we have a half hour of cross-examination, then more direct, then questions from the committee, I think we'll be getting into a fairly extensive period here.

Mr. BARON. That's fine, as long as the witness is instructed not to talk to anybody about her testimony that she's on the stand.

The CHAIRMAN. Would the witness be willing to step outside and not consult with counsel, or anyone else, during the period that you're relieved from being here testifying on the stand?

Ms. CARTER. Yes.

The CHAIRMAN. We would appreciate that. If you could go ahead, then, and leave the room, and if the clerk would go ahead and ask Mr. Borders to come in, we would hear his testimony.

We're getting some chairs here, Mr. Arrington, Mr. Rosier, if you would please be seated as quickly as we can get you chairs.

Mr. ARRINGTON. Thank you very much, Mr. Chairman.

Mr. Chairman, the other day, I think Senator Pryor, or someone, wanted some dates as to when Mr. Borders was confined and release date, and what have you. He entered the Allenwood Federal Correction Center on May 25, 1983. He left on December 16th, and went into—December the 10th, and entered Hope Village on the say day, December 10, 1985, at 1:00 p.m., and was released from Hope Village on February 24, 1986, and I just wanted to put those dates into the record.

The CHAIRMAN. Thank you very much.

Let me start, Mr. Borders, and indicate first that you understand, do you not, that you remain under oath, and the oath you took the other day remains in effect?

Mr. BORDERS. Yes, sir.

The CHAIRMAN. And that the immunity order, which we communicated to you on July 24, 1989, remains in effect. Do you understand that?

Mr. BORDERS. Yes, sir.

APPEARANCE OF WILLIAM A. BORDERS, JR.

Mr. BORDERS. May I make a statement, sir?

The CHAIRMAN. Yes, you may.

Mr. BORDERS. I want to take this opportunity, prior to any questions from the United States Senate Impeachment Trial Committee on the articles against Judge Alcee Hastings, to clearly set forth my position with respect to the same.

As the public record shows, I have been indicted, tried, convicted, and sentenced to five years in a correctional facility, and have been fined a substantial amount of money. I have paid whatever fines were levied against me, returned whatever moneys that were allegedly paid to me, and have served not less than 33 months at the Allenwood Federal Correction Camp. Moreover, I have been on parole for an additional 27 months, and on May 27, 1988, I was successfully released from parole.

As if this was not enough, I have been disbarred by the District of Columbia Court of Appeals, and have lost my former livelihood as an attorney.

Throughout these various proceedings, I have been the subject of inequitable, harassing, and somewhat contemptible efforts to have me waive my constitutional and personal convictions. I have consistently said to a multitude of agencies, attorneys, administrators and other bodies, judges and a host of other individuals that I did not want any further involvement in any proceedings, that I merely wished to pursue my life devoid of entanglement with the searching of others.

Despite this desire and my stated constitutional and personal convictions, I was asked to violate all of them before a Federal grand jury. When I refused to so violate my constitutional and per-

sonal conviction, I was held in contempt by the United States District Court in Florida. This contempt was for refusing to testify before a Florida grand jury on constitutional grounds, and I was then sentenced to prison for the expiration of the grand jury. On this occasion, I served approximately 40 days in jail. I might add, at that time my case was on appeal.

I have further been the subject of various inquires and have been constantly harassed and pressured to divorce myself from my personal convictions with regard to my constitutional guarantees and rather serve other interests. I believe my legal debt to society has been paid in full. Instead of being allowed to resume as natural an existence as one can resume after all that I have been through, I have rather been once again made the subject of inquiry.

I was hopeful, when the House prosecutor was not desirous of calling me as a witness and the defense attorney was not desirous of calling me as a witness, that I would finally be left alone to pursue that specter of happiness which was left to me. Unfortunately, for some unfathomable reason, this committee has decided that it will call me despite the fact that it has been advised by my counsel that I would not answer any questions concerning the issues and subject matter before this committee.

The committee has decided to call me even though they're allegedly not serving as a prosecutor but, rather, as the chief adjudicatory body. I had always thought that prosecution and judgment are two quite separate functions in the administration of any justice. Consequently, the two should not merge.

Mr. Justice Frankfurter put the matter somewhat differently but toward the same point in *Johnson* v. *United States*, 333 U.S. 46, a 1948 case, wherein he declared that—and I'm quoting—"There was no disputing the fact that counsel for each party are better able to determine the importance of witnesses, thus the natural result of preparation by both parties in the production by one side or the other of all vital witnesses."

However, this committee has apparently sought to ignore such a natural course of events in favor and embrace of a marriage between prosecution and judgment. Perhaps this truth is nowhere clearer than in the comments of Senator Specter when he declared to me that I had committed multiple offenses. Such a comment also makes suspect the alleged use immunity which is currently the subject of appellate review.

I have surmised independently, with no disrespect to my two good lawyers, that the immunity does not and cannot force me to testify in deprivation of my First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. As I have previously indicated, Senator Specter in my previous appearance before this body suggested I had committed multiple offenses. I am not desirous of committing any offense and do not really know the offenses to which Mr. Specter refers.

In any event, this just heightened my conclusion that answering any questions that this committee would subject me to further jeopardy of a criminal nature, and thereby heightened my resolve to embrace the protections I seek under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

Therefore, I respectfully refuse to answer any and all questions, including any questions allegedly seeking the clarification of this statement based on my First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights under the United States Constitution, and would respectfully request this committee to dismiss me and allow me to reshape and pursue my life. Thank you.

[Applause.]

The CHAIRMAN. Would the sergeant-at-arms please clear the audience from the room if we can't have order? We are not here to hear applause on either side of any of the issues presented.

Mr. Borders, you've read your statement, and we've heard it, and now I have a statement that I've been directed to read by the committee. If you would bear with us, we would appreciate that.

Let me note for the record that Mr. Arrington from Atlanta is here as your attorney again and Mr. Michael Rosier from Washington, DC. I'd like to recap the events that have transpired since your appearance before the committee on July 24th.

On Monday, your counsel stated that you would "ask for a stay tomorrow"—that being Tuesday—"so that the issue that was raised in those"—that is, the immunity proceedings—"could be adjudicated at the appellate level." After your appearance before us on Monday, the Senate legal counsel filed a motion in the Court of Appeals to dismiss your appeal or, in the alternative, for summary affirmance of the district court's immunity order. Then to help move matters along and in anticipation of your stay motion, Senate legal counsel asked the Court of Appeals to expedite its consideration of the motion to dismiss or affirm.

Your counsel opposed the motion to expedite and moved instead to delay until August 4th your response to the motion to dismiss or affirm.

In an order entered yesterday, the Court of Appeals denied both the motion to expedite and the motion to extend the time for your response. The court stated that your response should be filed on July 31st.

In explaining why expedition was not necessary, the Court of Appeals said, and here I quote: "We note that if appellant"—that is, Mr. Borders—"refuses to comply with the district court's order filed June 27, 1989, appellee"—which is the committee in this case—"may seek enforcement through civil contempt proceedings." That's the end of the quote.

The case cited by the Court of Appeals in support of that proposition was in the matter of the application of the United States Senate Permanent Subcommittee on Investigations. That's a case of a recalcitrant witness who served about 18 months in civil confinement for refusing to answer questions because of an alleged defect in the community's order.

The basic message of the Court of Appeals is, as we have always believed, that the committee may proceed to enforce its subpoena as long as the immunity order remains unstayed. Mr. Borders did file a stay application in the district court, and that court denied the application yesterday. The district court concluded that the stay should be denied because "it is unlikely that Mr. Borders will prevail on the merits of his appeal."

Mr. Borders filed a notice of appeal from the denial of the stay but as of mid-day today had not filed a motion for a stay in the Court of Appeals.

Mr. Borders, the legal situation, therefore, is that the district court's immunity order, which has been examined again by the district court in light of your objections, remains in effect.

Mr. Borders, have you come prepared today to answer any questions of the committee?

Mr. BORDERS. I stand on my statement.

The CHAIRMAN. Do you or your counsel have anything to add to the objections that you stated on Monday or that you just stated to the committee and which the committee overruled on Monday?

Mr. BORDERS. No, sir.

The CHAIRMAN. In accordance with the ruling of the committee on Monday and in light of the fact that the subpoena and the immunity order remain in effect, I do direct you to answer the following questions:

Now, Mr. Borders, in 1981, did you ever meet with an individual who represented himself to be Frank Romano?

Mr. BORDERS. I stand on my statement.

The CHAIRMAN. Did you promise or state to that individual that in exchange for money paid to you the prison terms of Frank and Tom Romano would be reduced to probation?

Mr. BORDERS. Mr. Chairman, if you would incorporate my statement and my answer in each question, that will be my answer to each question you ask me, sir.

The CHAIRMAN. Let me ask a final and comprehensive question, as I did on Monday, Mr. Borders. The committee needs to know whether or not Judge Hastings and you planned together to solicit and accept money from a person who you thought was a defendant in a case before Judge Hastings in return for a modification of the sentence of the defendant and his brother. Among the particular facts that the Senate will need to determine are whether Judge Hastings and you arranged that he would eat at the Fontainebleau Hotel on September 16, 1981 as a sign that he was a participant in the bribery scheme, and whether or not actions that he took in reducing a forfeiture that had been imposed on the defendants, including the timing of his final order on the forfeiture, were intended to be further signs that he was a participant in the bribery scheme.

Additionally, the Senate will need to determine whether on October 5, 1981, when you and Judge Hastings spoke by telephone and referred to "letters for Hemp," whether you were genuinely discussing help for Hemphill Pride or acting in furtherance of the bribery scheme.

Mr. Borders, are you refusing to testify to the committee about each of these matters?

Mr. BORDERS. Incorporate my statement, sir.

The CHAIRMAN. Mr. Borders, committee counsel are directed to prepare a resolution for the committee's consideration on Monday, July 31, 1989. That resolution, which, under the relevant procedures, would be reported to the Senate, will authorize the committee to commence a civil enforcement action against you to compel your testimony.

Mr. Borders, although the committee anticipates that the taking of the testimony for the parties' witnesses will be completed by August 4, 1989, the committee's record will remain open to hear your testimony. While it is anticipated that the Senate will be in recess after August 4th until September 6th, the committee will make arrangements for receiving your testimony during the recess. This could occur, if necessary, at a deposition before one or more of its members. Of course, both before and after the recess, the full committee is available to hear your testimony.

You should be advised that the committee's decision to pursue a civil enforcement action at this time does not preclude a later determination to refer the matter to the United States attorney for criminal prosecution for contempt of Congress.

Mr. Borders, you remain subject to the committee's subpoena. You will be subject to recall on written or telephone notice to you or your counsel.

Before we permit you to leave, is there any further comment from a member of the committee?

The VICE CHAIRMAN. Yes, Mr. Chairman.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Mr. Borders has seen fit to comment about my statement, and I would like to supplement what the chairman has said.

Mr. Borders, I made a comment when you were here before about the possibility of multiple offenses when I was referring to the possibility of a criminal contempt proceeding. The chairman had given you certain advice, and as vice chairman but speaking for myself, which is what I clearly denominated, I had made the comment to you associating myself with what Senator Lieberman had earlier said about his determination to hear your testimony if that was possible in accordance with due process of law and the committee had decided to call you.

When you made the comment that you have paid your debt to society, we respect that. But what we are doing here is totally different from any of the previous proceedings, including the criminal proceeding against you. And the law has established, as I think you know as an attorney—and I make this representation to you and you have your own counsel—that every man is entitled to the testimony of every other man. That's a principle of law which is firmly established in the decisions of this country. And that even goes if the man is the President of the United States. And this is a separate proceeding from what has happened previously in the criminal prosecution against you. So that when you comment about having paid your debt to society or about double jeopardy or any other facet, that has nothing to do with this proceeding.

We are looking at a matter on the impeachment of Judge Hastings, and this committee is entitled to your testimony, just as any man would be entitled to your testimony in a proceeding. When you make the comments about your constitutional rights, that matter has been taken before the court when this committee sought immunity and the court granted that. And as you've heard what the chairman has said, there's no stay. We have a right to proceed to take your testimony.

We understand the difference between prosecutorial and adjudicatory functions, and we respect the Supreme Court decision. But it is appropriate—this is a somewhat different proceeding, but it would be appropriate for a court to call a witness or to ask witnesses questions if the court decided to do so. And we believe we have every right to do that and are proceeding entirely in accordance with due process of law.

When the chairman has talked about civil contempt, you understand that. That's the process where we can ask the full Senate and the court to hold you in civil contempt if you refuse to answer a question. And you can purge yourself of that. The expression is you'd have the keys in your pocket, the keys to the jail in your pocket, but it is possible also, as I think you know—and you have counsel, but I make the representation to you that there can be separate charges for criminal contempt. And it is possible that you could have a separate charge for each time you refuse to answer a question. Some research has been done preliminarily, and I have been informed that it may not be possible to do that, that perhaps there would only be a single criminal contempt citation.

I don't know if that's going to happen. That's up to the committee. That is speculative. But speaking for myself again, I believe you are a very important witness, and again speaking for myself, I would seek to do everything within our power lawfully and properly to secure your testimony.

The CHAIRMAN. Are there any other statements that any Senator wishes to make at this point?

Senator LEAHY. Very briefly.

The CHAIRMAN. Senator Leahy?

Senator LEAHY. Very briefly, Mr. Chairman.

I know, Mr. Borders, you spoke of the committee taking on the role of the prosecutor here. I was one Senator who wanted you brought here to hear your testimony, not because I take to myself the prosecution's case or the respondent's case. I can state and state most emphatically I come to this matter with a completely open mind, that I've listened to both sides diligently, and I will not make up my mind on any of these Articles of impeachment until all the evidence is in.

But I also feel that you are an important part of that evidence. I have no way of knowing why either the prosecution or the respondent did not call you. Perhaps because they felt they'd face the same thing that we're facing, your refusal to speak. But you have been called. I supported that call to have you come here. But I also support the efforts to hold you in contempt if you do not testify.

The CHAIRMAN. Are there any other statements? Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman.

Mr. Borders, I want to associate myself with the remarks of the chairman and Senator Specter and Senator Leahy, and just add this personal note to you briefly. I understand your sentiment when you say that you served your debt to society. In fact, you have. But I want you to understand that we are not calling you as a matter of harassing you or trying to force you to serve a further debt to society. In fact, you have been extended a grant of immuni-

ty which promises you that you will not be punished or affected in any way adversely for anything you testify before this committee.

What we're doing here is calling on you as a citizen of the United States to carry out your obligations as a citizen, to cooperate with a duly constituted committee of the United States Senate performing a constitutionally ordained function. And it is an important one, and you are critical to our ability to perform that function.

We have to decide whether a man, Judge Alcee Hastings, is to remain on the Federal bench. We've sat here and listened to both sides present their cases, and they are dramatically different. And it seems to me that you are the only person on this earth who really knows what happened here, whether you acted independently or whether you acted together with Judge Hastings. And it is so that we can do justice here that we call upon you to testify, not to punish you, not to harass you, not to disturb your life, but just to help us perform this function. And that is why, though it will be unpleasant if you persist in your refusal to testify, I believe this committee will take steps that will force your incarceration.

I want to say finally that there is beyond this particular case in our search for the truth the credibility of the process of a committee of the United States Senate, and the question of what a committee of the United States Senate will do when a critically important material witness refuses to cooperate and provide evidence and information within his control. So that we are not only acting in a way that we think helps us dispatch our duty in this case, but we are creating a precedent for any other committee of the Senate or Congress that will come after us that will need the help of another citizen to find the truth and reach a just conclusion.

I wanted to say that to you personally so that you understand the context in which we operate. None of this makes any of us happy. Please don't think that, but we take it to be our responsibility under the law and the Constitution.

The CHAIRMAN. Does any other committee member wish to make a statement?

[No response.]

The CHAIRMAN. Mr. Borders, I wish to make it clear that each of the objections, both those that you raised Monday and those that you raised today, in the view of the committee are overruled and that you have been directed to answer the committee's questions. And it's my understanding from your statements that you continue to refuse.

Mr. BORDERS. Yes.

The CHAIRMAN. On that basis, you're free to leave. We appreciate you appearing here today and appreciate your counsel being present with you.

Mr. BORDERS. Thank you very much.

The CHAIRMAN. Thank you.

Would counsel for respondent please recall Ms. Williams—Marilyn Carter, excuse me.

[Pause.]

The CHAIRMAN. You may proceed, Mr. Baron.

Mr. BARON. Thank you, Mr. Chairman.

Good afternoon, Ms. Carter.

TESTIMONY OF MARILYN PRATT CARTER (continued)

CROSS EXAMINATION (continued)

Ms. CARTER. Hi.

Mr. BARON. You're going to have to sit up a little bit closer to the mike and maybe pull the mike closer to you.

Ms. Carter, do you recall that you were in chambers, Judge Hastings' chambers, on October 6, 1981, and also on October 9, 1981; is that correct?

Ms. CARTER. Yes.

Mr. BARON. And October 6, 1981, is the day that the order in the *Romano* case was issued; correct?

Ms. CARTER. Yes.

Mr. BARON. Now, on October 9, 1981, you were interviewed by FBI agents some time in the afternoon?

Ms. CARTER. Yes.

Mr. BARON. All right. And would you agree with me that was first, obviously, only three days after the events concerning the issuance of the order?

Ms. CARTER. Right.

Mr. BARON. And at that time, did you have any idea about what this was all about, I mean why you were being questioned?

Ms. CARTER. No, I didn't.

Mr. BARON. And you hadn't spoken to anybody's lawyer or to Judge Hastings or any of your coworkers in the office?

Ms. CARTER. On which date?

Mr. BARON. On the 9th when you were interviewed. I think you testified that everybody was interviewed separately.

Ms. CARTER. That's correct.

Mr. BARON. And you didn't have any opportunity to review things with your colleagues?

Ms. CARTER. That's correct.

Mr. BARON. OK. And all this is taking place three days after the event?

Ms. CARTER. Right.

Mr. BARON. Now, isn't it a fact that when you were interviewed on October 9th, three days after the event, you told the FBI that on the 6th the judge had issued a long order that you didn't read, and that you had sent the copies out on Tuesday, and you said the judge stated, "Sorry for the rush, but this must go out today," although he didn't say why. Do you recall telling the agents that?

Ms. CARTER. Yes.

Mr. BARON. And isn't that the fact?

Ms. CARTER. Yes.

Mr. BARON. The judge did say that?

Ms. CARTER. Yes.

Mr. BARON. Now, you mailed copies to two attorneys, Mr. Deichert and Mr. Sonnett?

Ms. CARTER. Yes.

Mr. BARON. And you mailed them special delivery?

Ms. CARTER. Correct.

Mr. BARON. Do you also recall telling the agents on October 9th that you couldn't understand why there was such a rush, that it was very unusual since the order didn't have any time limit involved? Do you recall saying that to them?

Ms. CARTER. Yes, I recall saying it.

Mr. BARON. And isn't it a fact that there are some orders that do have a time limit built into them, such as a temporary restraining order? Are you familiar with that kind of order?

Ms. CARTER. Yes.

Mr. BARON. It only has a 10-day life unless it's renewed, and it's important that people get hold of them right away.

Ms. CARTER. Right.

Mr. BARON. Isn't that correct?

Ms. CARTER. Uh-huh.

Mr. BARON. You might also have it on a show cause order where it has to be served on somebody within a certain amount of time when they have to show cause. That occasionally happens?

Ms. CARTER. That's correct.

Mr. BARON. OK. So they have a time limit built in. But isn't it a fact that this order didn't have any such time limit?

Ms. CARTER. That's what I'm told.

Mr. BARON. Well, indeed, isn't it a fact that this order had been sitting around since July when the judge had ruled on the bench in the *Romano* case, and this was now October?

Ms. CARTER. The order had been sitting around?

Mr. BARON. Well, the issuance of the order had not taken place for months.

Ms. CARTER. That's what I'm told.

Mr. BARON. Do you recall telling the FBI agents on October 9th that on the 6th, in conjunction with getting the order out, that everyone was rushing to get the order done, and the judge was pressuring people to get the order done, to drop everything else? Do you recall telling them that, the agents on the 9th?

Ms. CARTER. I reviewed the notes, and the notes reflect, obviously, what I said to them on that day, yes.

Mr. BARON. Do you concur that that, in fact, is what happened?

Ms. CARTER. No, not exactly.

Mr. BARON. Well, how would you change it?

Ms. CARTER. I was not quoting the judge to say that he said "drop everything." That is not accurate. It did seem as though there was a need to have it completed and mailed on that date.

Mr. BARON. So it was your sense of what had to be done, a sense of being pressured, a sense of a need to get it out, although you're not quoting the judge as literally saying that to people, to drop everything else, but that was your sense of what had to be done?

Ms. CARTER. Right.

Mr. BARON. OK. You were in chambers on the afternoon of October 9th.

Ms. CARTER. Yes.

Mr. BARON. Throughout the day?

Ms. CARTER. Yes.

Mr. BARON. And I think you said that you were being interviewed by FBI agents for approximately half-an-hour, give or take a few minutes?

Ms. CARTER. Right.

Mr. BARON. Is that accurate?

Ms. CARTER. Yes.

Mr. BARON. OK. During the time that you were in chambers, did any reporters show up who wanted to talk to Judge Hastings, or did any reporters or media people call chambers wanting to talk to Judge Hastings as far as you know?

Ms. CARTER. I only recall one newspaper reporter showing up to the office, and if I'm not mistaken, he inquired about the *Romano* file.

Mr. BARON. He wanted to look at the file?

Ms. CARTER. Right.

Mr. BARON. My question was: Was anybody there trying to find Judge Hastings?

Ms. CARTER. Not that I recall.

Mr. BARON. And you were around during that period?

Ms. CARTER. Yes.

Mr. BARON. Now, you said that you sent the order out special delivery, and you said that that was your decision?

Ms. CARTER. Right.

Mr. BARON. OK. Now, I'd like to understand something about that. Special—I mean, did you have a sense it was important that the order get out that day?

Ms. CARTER. No. I had a sense that the attorneys were waiting for it, the reason they had called a few times asking had it been done yet.

Mr. BARON. But Mr. Sonnett hadn't called?

Ms. CARTER. I don't know who it was that called, but I know I received a phone call, a couple of phone calls about it.

Mr. BARON. Did you call the attorneys up once it had been done just to let them know it had been issued, once it was official?

Ms. CARTER. I don't believe I did.

Mr. BARON. Do you recall that Jeff Miller had gone home in response to the judge's admonition on the 5th of October to go work on the order?

Ms. CARTER. I don't recall.

Mr. BARON. Let me direct you to your grand jury testimony. You recall you appeared before the grand jury?

Ms. CARTER. Yes, I did.

Mr. BARON. And that was, I believe, on the 15th of October.

Ms. CARTER. OK.

Mr. BARON. About nine days after the 6th and six days after the 9th, right?

Ms. CARTER. OK.

Mr. BARON. Here's the question that was put to you: "It seems clear from your interview with the agents that you at least at the time of the interview had the perception that the judge was very concerned about getting the order out and pressuring and rushing everyone. What would have led you to that conclusion?" Your answer was: "Because Jeff took some work home with him to work on it and, you know, they don't take work home all the time. But that was one time that he did take it home, and that led me to believe that if he took the stuff home then they were going to try and complete it by the following day, which was Tuesday."

Do you recall testifying that? If you have any question, I'll be happy to show it to you.

Ms. CARTER. No, I don't have any question.

Mr. BARON. Does that refresh your recollection, that Jeff had taken work home on that Monday the 5th and that this was unusual?

Ms. CARTER. Well, that's what I said, but I really don't have any independent recollection of it.

Mr. BARON. You don't have any reason to question your recollection at that time?

Ms. CARTER. No.

Mr. BARON. I'd like to ask you something about the exhibit that you were shown of the judge's book. I'm going to show you part of it. I'm going to direct your attention to the entry on Friday, May 8, 1981.

May I approach the witness, Senator Specter?

The VICE CHAIRMAN. Yes.

Mr. BARON. Thank you.

Mr. ANDERSON. Mr. Vice President, I would object, on the grounds that this witness has not authenticated that portion. She was on maternity leave from February through June.

Mr. BARON. I think the witness is in a position to say that after I show it to her. I haven't even showed it to her yet.

The VICE CHAIRMAN. The witness may receive the documents and you may ask your next question, Mr. Baron.

Mr. BARON. Now, that's Friday, May 8, 1981. Now, I understand that you were on maternity leave at that time?

Ms. CARTER. That's correct.

Mr. BARON. OK. Look at the top entry, which is scratched through, on Friday the 8th. What does that say?

Mr. ANDERSON. Mr. Chairman, I object. This is not an entry she made, she wasn't there and——.

Mr. BARON. But she can read——

The VICE CHAIRMAN. Just a minute, Mr. Baron. There's an objection pending. Overruled.

Mr. BARON. Thank you.

Ms. CARTER. It says, "9:30 sentencing Thomas and Frank Romano," and that's scratched through.

Mr. BARON. That's Friday, the 8th?

Ms. CARTER. Yes.

Mr. BARON. All right. Now, could you recognize the handwriting?

Ms. CARTER. Yes, it's the girl that filled in for me.

Mr. BARON. And who was that?

Ms. CARTER. Felicia Wilkinson.

Mr. BARON. OK. Now, would you turn to the 11th, just a couple more pages in the pile. What's the entry you see there? I believe it's the first one.

Mr. ANDERSON. The same objection, just so it is clear on the record, Mr. Chairman. This is not her writing, she's reading something else of which she has no competent knowledge.

The VICE CHAIRMAN. The record is already clear, Mr. Anderson. The objection has been overruled. The witness may proceed.

Ms. CARTER. "Sentencing Frank and Thomas Romano," and it's scratched through.

Mr. BARON. OK. Thank you.

Now, were you aware of the fact that in 1981 Judge Hastings was interested in buying a house and had been unable to purchase one? Do you recall any conversation about that?

Ms. CARTER. I recall briefly he mentioned to me about a house.

Mr. BARON. And do you recall telling the agents on October 9th that the judge said the reason he hadn't purchased a home was because he didn't have the funds to do so?

Ms. CARTER. Right, he indicated that the houses cost a lot, yes.

Mr. BARON. Do you recall telling the agents that for the last month-and-a-half the judge had been looking for a house, unsuccessfully?

Ms. CARTER. If that's what it says. I don't recall.

Mr. BARON. I have nothing further.

The VICE CHAIRMAN. Is there any redirect?

REDIRECT EXAMINATION

Mr. ANDERSON. Just briefly, Mr. Chairman.

Ms. Carter, there is evidence in, but let me test your recollection. Do you recall whether Judge Hastings was scheduled to be out of town traveling for most of October 1981?

Ms. CARTER. I don't recall.

Mr. ANDERSON. Do you recall when Mr. Miller was scheduled to be leaving chambers?

Ms. CARTER. Mr. Miller?

Mr. ANDERSON. When his clerkship was originally scheduled to run out.

Ms. CARTER. I don't recall.

Mr. ANDERSON. But those would be matters in the record, would they not?

Ms. CARTER. Yes.

Mr. ANDERSON. And you do recall that at least one of the attorneys for the Romanos had called inquiring about the status of the order?

Ms. CARTER. Yes.

Mr. ANDERSON. And the decision to send a special delivery was a matter that was within your discretion on that occasion and on others, was it not?

Ms. CARTER. Totally, yes.

Mr. ANDERSON. Thank you.

The VICE CHAIRMAN. Any recross?

Mr. BARON. No, sir.

EXAMINATION OF THE COMMITTEE

The VICE CHAIRMAN. Ms. Carter, when you say that the matter for sending special delivery was within your discretion, did you exercise that discretion very often to send special delivery on orders?

Ms. CARTER. I did, especially if the order had set in chambers for a day or two after Judge Hastings had signed it, sure.

The VICE CHAIRMAN. Was that the case here?

Ms. CARTER. It was not.

The VICE CHAIRMAN. So, when you sent them after it had remained in the chambers for a day or two—but that was not the case here—why send this one special delivery?

Ms. CARTER. Because I got the inquiries over the phone and I knew it was late in the evening, so the envelope was sitting in the mail box overnight, so I just thought I was helping it to get there to the attorneys faster.

The VICE CHAIRMAN. How expensive is it to send something special delivery?

Ms. CARTER. I have no idea.

The VICE CHAIRMAN. Were you concerned about cost on matters generally, including a special delivery expense?

Ms. CARTER. No.

The VICE CHAIRMAN. And you're sure that Judge Hastings said nothing to you about sending this special delivery?

Ms. CARTER. Absolutely not. I don't even know if he was aware that we had the ability to send things special delivery.

The VICE CHAIRMAN. Did you ever discuss with Judge Hastings sending anything special delivery?

Ms. CARTER. No.

The VICE CHAIRMAN. Had he ever asked you to send anything special delivery?

Ms. CARTER. No.

The VICE CHAIRMAN. Any questions, Senator Leahy?

Senator LEAHY. Very briefly, Mr. Chairman.

I might ask this: How often would you say, in the course of a month, might something go out special delivery?

Ms. CARTER. Maybe twice a month.

Senator LEAHY. Now, you said this was something that people were in a hurry for, the law firm might be in a hurry to get, is that right?

Ms. CARTER. Right.

Senator LEAHY. Wouldn't it be normal practice, if you had a law firm eager to get a finding or an order, if they knew the order was there, would it be normal practice to call them up and say, "Look, we can stick this thing in the mail or, if you want it really fast, just come on over and pick it up"? Doesn't that happen fairly often?

Ms. CARTER. It does not happen that often.

Senator LEAHY. Really?

Ms. CARTER. No.

Senator LEAHY. And you haven't had law firms call, somebody from a law firm call and say, "We're kind of anxious about this order, has the judge signed it," and respond yes, he has, and have them say, "Well, we'll send somebody right over to get it"?

Ms. CARTER. Yes, it has happened before, but it doesn't happen all the time, and it was 6:00 o'clock in the evening and I was not going to wait around.

Senator LEAHY. But if they wanted to come over the first thing in the morning, they would still get it faster than mailing it, wouldn't they?

Ms. CARTER. They could have, but because I did not call them and tell them that it had been signed, I guess they were unable to direct me to hold onto the copies.

Senator LEAHY. Now, why did you know that everybody was in a hurry for it?

Ms. CARTER. Jeffrey was standing over Betty, assisting to translate some of his handwriting to her if she had any trouble with it.

Senator LEAHY. His handwriting, do you mean Judge Hastings' handwriting?

Ms. CARTER. No, Jeffrey's handwriting.

Senator LEAHY. Jeffrey's handwriting.

Ms. CARTER. Right. It seemed as though for some reason it was an order that had to get done that day.

Senator LEAHY. Well, had Judge Hastings said something about it being something that had to be done that day?

Ms. CARTER. He did say it to me once he signed it, yes.

Senator LEAHY. He said we're in a hurry for this, or what did he say?

Ms. CARTER. No. To the best of my recollection, he apologized for the hour and asked me if I would be kind enough to send it out that evening.

Senator LEAHY. Was there anything unusual in that?

Ms. CARTER. No, he's done that before. That was not the first time.

Senator LEAHY. So, the reason you knew this was something that had to get done in a hurry was because the judge had told you himself?

Ms. CARTER. That's correct.

Senator LEAHY. Judge Hastings told you himself?

Ms. CARTER. Right.

Senator LEAHY. And to your knowledge, was that why the clerk and others were staying there following it along?

Ms. CARTER. Right.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

The VICE CHAIRMAN. Any further questions?

Senator PRYOR. One quick question, Mr. Chairman.

The VICE CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Did you ever see Judge Hastings using the pay telephone in the hall of the Federal court building?

Ms. CARTER. No, I never did.

Senator PRYOR. Did you ever hear anyone in your office, the staff, the interns, legal clerks, anyone ever say that they saw him in the hall using the pay phone?

Ms. CARTER. No.

Senator PRYOR. Thank you.

The VICE CHAIRMAN. Anything further?

Senator BOND. Mr. Chairman?

The VICE CHAIRMAN. Senator Bond.

Senator BOND. Referring back to the period in May, May 9, 10, 11, that weekend in 1981 when the original—when there was a postponement of the sentencing of the Romanos, you would have, in the normal course, received information if an attorney had called in and said he was going to ask for a continuance or a delay in the sentencing, is that—in your official position, would you get that kind of communication?

Ms. CARTER. Yes.

Senator BOND. Do you recall anyone on behalf of the Romanos contacting you or your office on May 9th about postponing or making a motion?

Ms. CARTER. I was completely out of the office until June 1st, so I was not there to receive such a call.

Senator BOND. Thank you.

The VICE CHAIRMAN. Ms. Carter, you are excused.

Ms. CARTER. Thank you.

Mr. BARON. Mr. Chairman, may I ask a couple questions?

The VICE CHAIRMAN. Mr. Baron.

FURTHER RECROSS EXAMINATION

Mr. BARON. Ms. Carter, you've testified here that the judge said to you, "Sorry for the rush, but this must go out today," with regard to the order. Isn't that correct?

Ms. CARTER. Right.

Mr. BARON. And you've testified that there was an atmosphere of being pressured that other work should be dropped to get the order out that day, although the judge never literally used those words?

Ms. CARTER. Right.

Mr. BARON. That's your recollection?

Ms. CARTER. Yes.

Mr. BARON. That was your recollection back on October 9, 1981?

Ms. CARTER. Yes.

Mr. BARON. OK. Did that play a role in your decision to get it out special delivery?

Ms. CARTER. Of course.

Mr. BARON. You said you didn't want to stick around that night. But isn't it a fact that Judge Hastings had a jury out that night until 9:30? Do you remember that?

Ms. CARTER. I don't recall, but perhaps he did and that's why he was still there at 6:00.

Mr. BARON. I have nothing further.

The VICE CHAIRMAN. Is there anything further?

Senator PRYOR. Mr. Chairman, may I ask one follow-up question?

FURTHER EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Senator Pryor.

Senator PRYOR. Did Judge Hastings give to you only the order relative to the Romanos, or were there a stack of orders, multiple——

Ms. CARTER. No, there was just one order.

Senator PRYOR. Just the one?

Ms. CARTER. Right, at 6:00 that evening, everything else had been taken care of.

Senator PRYOR. Thank you very much.

The VICE CHAIRMAN. Thank you very much, Ms. Carter. You are excused.

Ms. CARTER. Thank you.

The VICE CHAIRMAN. Would counsel for Respondent call his next witness?

Mr. ANDERSON. Could counsel for Respondent have 5 minutes? This is the witness whose plane was cancelled yesterday evening and I haven't had any chance to chat with her and I would like to briefly before she's called.

The VICE CHAIRMAN. You may have 5 minutes. We will stand in recess for 5 minutes, but we will then start again.

[Short recess.]

The CHAIRMAN. The committee will come to order.

My understanding from counsel is that they have a witness ready to testify at this point, and I think the committee's pleasure at this point, as I understand it from talking to the committee members, is to do as much productive work as we can between now and 5:30, plan to recess at 5:30 and come back Monday.

The other two witnesses who were possibly to be called today are people who are available in Washington and can be called at any time in the next several days when we reconvene, as I understand it.

With that understanding, why don't we go ahead with your next witness, Mr. Anderson.

Mr. ANDERSON. The Respondent will call Shirley Pride.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Shirley Pride, swear and affirm that the evidence that you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. PRIDE. Yes, sir.

The CHAIRMAN. Please be seated.

TESTIMONY OF SHIRLEY C. PRIDE

DIRECT EXAMINATION

Mr. ANDERSON. Would you tell the committee your full name?

Ms. PRIDE. Shirley Caldwell Pride.

Mr. ANDERSON. And were you in early—in 1981, were you married to Hemphill Pride?

Ms. PRIDE. Yes.

Mr. ANDERSON. Did you and your son Elliott accompany Mr. Pride to an affair at the L'Enfant Plaza on October 9, 1981?

Ms. PRIDE. Yes, we did.

Mr. ANDERSON. And what was that affair for?

Ms. PRIDE. It was a gala affair for Bill Borders.

Mr. ANDERSON. Did you see——

Ms. PRIDE. William Borders—I'm sorry.

Mr. ANDERSON. Did you see Mr. Borders and Judge Alcee Hastings that day?

Ms. PRIDE. Yes, I did.

Mr. ANDERSON. When was the first time you saw them?

Ms. PRIDE. I saw them that morning, right after we arrived in Washington and checked into the hotel, they came by the room.

Mr. ANDERSON. Did there come a time later that afternoon when, in your presence, your husband received a telephone call concerning Mr. Borders?

Ms. PRIDE. Yes, sir.

Mr. ANDERSON. And what did he do then, if you know? Did he call Judge Hastings?

Ms. PRIDE. No, he didn't use the phone. He left.

Mr. ANDERSON. And what happened then, as best you recall it?

Ms. PRIDE. After the phone call, he left. He carried my son and they left for a while and came back—well, our son.

Mr. ANDERSON. About how long were your son and Mr. Pride gone at that time?

Ms. PRIDE. It wasn't long, just a few minutes.

Mr. ANDERSON. And did he tell you what he had been doing while he was out of the room?

Ms. PRIDE. No, he didn't.

Mr. ANDERSON. When he came back with your son, what did he do then?

Ms. PRIDE. He came back with him and he stayed for a while and then later on he left the room again.

Mr. ANDERSON. Now, when you say he stayed for a while, about how long is a while, as best you can recall it?

Ms. PRIDE. I would say between 20 and 30 minutes.

Mr. ANDERSON. And when he left the room again, did he tell you where he was going?

Ms. PRIDE. No, he didn't.

Mr. ANDERSON. How long was he gone the second time he left?

Ms. PRIDE. That time wasn't very long, either. He was never gone very long. I guess—I'm not sure, I don't know exactly how long, but at the most maybe 20 minutes.

Mr. ANDERSON. After he returned, did there come a time that evening when he explained to you what had happened?

Ms. PRIDE. No, he didn't.

Mr. ANDERSON. Well, did there come a time that you learned that Mr. Borders had been arrested?

Ms. PRIDE. Yes.

Mr. ANDERSON. And did you discuss that with your husband?

Ms. PRIDE. Yes, we did.

Mr. ANDERSON. And what did he tell you about that event?

Ms. PRIDE. Well, he couldn't really tell me anything. After I heard the rumors about him being arrested and all, you know, he didn't know what had happened.

Mr. ANDERSON. And what time did your husband receive the first call, to the best you can recollect, the first call he got? Was it in the afternoon, the morning, the evening?

Ms. PRIDE. It was in the afternoon, after we had been shopping and back, late afternoon.

Mr. ANDERSON. And do you know when he left the room that time whether he was going to see Judge Hastings or not?

Ms. PRIDE. No, I don't know where he was going. He didn't say.

Mr. ANDERSON. So, your recollection today is at best that he left the room with your son Elliott briefly, am I correct?

Ms. PRIDE. That's correct.

Mr. ANDERSON. He came back and remained somewhere in the range of 20 or 30 minutes?

Ms. PRIDE. Yes.

Mr. ANDERSON. He then went again and was out and he returned, is that correct?

Ms. PRIDE. That's correct.

Mr. ANDERSON. Now, did you also know Bill Borders?

Ms. PRIDE. Yes, sir.

Mr. ANDERSON. During the period when your husband was incarcerated, did Mr. Borders do anything for you?

Ms. PRIDE. Yes.

Mr. ANDERSON. What did he do for you?

Ms. PRIDE. Well, that was one occasion where he helped me financially.

Mr. ANDERSON. And did you ask him to help you financially?

Mr. PRIDE. No, I did not.

Mr. ANDERSON. Did he consult with you before he did it?

Ms. PRIDE. No, he did not.

Mr. ANDERSON. Have you known Judge Alcee Hastings? Do you know——

Ms. PRIDE. Do I know him?

Mr. ANDERSON. Yes.

Ms. PRIDE. Yes, sir.

Mr. ANDERSON. How long have you known him?

Ms. PRIDE. I've known him for maybe 23 to 24 years.

Mr. ANDERSON. And do you have an opinion about Judge Hastings, based on your knowledge of him?

Ms. PRIDE. Yes.

Mr. ANDERSON. What's your opinion of him?

Ms. PRIDE. From the years I've known him, he seems a good person, he's a fair person. I like him. He's honest and fair.

Mr. ANDERSON. Mr. Chairman, may I have just a moment?

The CHAIRMAN. You may.

[Pause.]

The CHAIRMAN. It is important for me to try and fix it. Was there any other time in that afternoon when your husband took your son Elliott out of the room with him, other than the time when he went out briefly and then came back?

Ms. PRIDE. That was the only time.

Mr. ANDERSON. Have you previously testified concerning the events of that afternoon?

Ms. PRIDE. Yes, I have.

Mr. ANDERSON. And when was that or where was it?

Ms. PRIDE. That was in Miami.

Mr. ANDERSON. And was that at Judge Hastings' trial?

Ms. PRIDE. Yes, it was.

Mr. ANDERSON. And to the best of your recollection, is the testimony you have given here today consistent with the testimony you gave there?

Ms. PRIDE. Yes, sir.

Mr. ANDERSON. Now, you were with Hemphill Pride for some period of time, were you not? You were his wife for a period of time?

Ms. PRIDE. Yes, we were married.

Mr. ANDERSON. And you know him.

Ms. PRIDE. Yes.

Mr. ANDERSON. And do you have any opinion about Mr. Pride's memory and his ability to recall details?

Ms. PRIDE. Well, yes, he has a tendency to forget some things, if it is not important to him at the moment, I guess like I sometimes will forget, but I wouldn't say he has a habit of forgetting, no, I couldn't say that.

The CHAIRMAN. You might pull that microphone——

Mr. ANDERSON. Pull that microphone closer.

Ms. PRIDE. I say he may forget sometimes when it is not important at the moment to remember it, but I wouldn't say that he has a habit of forgetting.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Representative Bryant, did you have a point?

Mr. BRYANT. We wish to interpose at this time a very substantive objection to this question. I believe the settled law is that questions to other witnesses of evaluation of memory of another witness are clearly improper. There are very sound reasons for that.

First of all, perceptions of memory are highly unreliable, inherently so, because they reflect the quality of the memory of the individual testifying more than the individual they are describing. The appropriate way for testing the memory of a witness who has testified is to cross-examine him, which they've had the opportunity to do, and in fact they are free to call their own witnesses to contradict Mr. Pride.

The fact of the matter is that if this line of questioning is allowed to go forward, it will then allow or open up the opportunity to both sides to call witnesses forward who have no knowledge of the case whatsoever, but ask them to testify about the memory of the witnesses in the case. Accordingly, that is why we or you and I think other courts have held this type of a question is inadmissible, and we object to it.

Mr. ANDERSON. May I respond, Mr. Chairman?

The CHAIRMAN. You may respond.

Mr. ANDERSON. Mrs. Pride for a period of time lived with Hemphill Pride, is his wife, she is familiar and has an adequate basis to form a lay opinion. Mr. Pride's ability to recall detail, especially in a case of this kind, may be a fact of some consequence. He has testified here but, moreover, the committee, throughout the House's case, has made it clear that some fairly established principles of evidence have given way, in view that the Senate may be able to sift and to decide what the meaning and relevance is of the evidence. This is uniquely qualified evidence, to comment on Hemphill Pride's recollection, and I can't see——

The CHAIRMAN. Counsel, we will sustain the objection and request that you not proceed to ask additional questions along this line.

Mr. ANDERSON. Mr. Chairman, I have no further questions of this witness.

The CHAIRMAN. Do the House managers, Representative Bryant, do you have cross examination?

CROSS EXAMINATION

Mr. BRYANT. Yes, Mr. Chairman.

Ms. Pride, my name is John Bryant and I am a member of the House of Representatives, one of those who is presenting this case to the Senate.

First of all, I would like to ask you where you worked in 1981?

Ms. PRIDE. South Carolina Human Affairs Commission.

Mr. BRYANT. And have you worked there continuously since?

Ms. PRIDE. Yes, I have.

Mr. BRYANT. You work there today, is that correct?

Ms. PRIDE. Yes, sir.

Senator RUDMAN. Mr. Chairman, I cannot hear the witness.

The CHAIRMAN. Perhaps you can pull that microphone down a little.

Mr. BRYANT. Do you recall having met in the past with Special Counsel for the House of Representatives who came to visit with you about this case? Do you recall that?

Ms. PRIDE. Yes, I do. That was at my job, I think, right? I think I remember that.

Mr. BRYANT. As I understand it, you and Mr. Pride separated in May 1981, is that correct?

Ms. PRIDE. That's correct.

Mr. BRYANT. All right. That was about the same time that Mr. Pride was suspended from the practice of law?

Ms. PRIDE. I'm not sure on the suspension and the disbarment. I thought he was suspended before incarceration. Was he? I don't know the answer to that.

Mr. BRYANT. Well, you were not personally involved in the steps he was taken, if any, to gain readmission to the bar, is that correct?

Ms. PRIDE. That's correct, I was not involved.

Mr. BRYANT. So, you did not know the rules governing his readmission, is that correct?

Ms. PRIDE. That's correct.

Mr. BRYANT. For example, I don't suppose you knew at the time that there was a two-year waiting period before Mr. Pride was even eligible for readmission——

Mr. ANDERSON. Mr. Chairman, I object. This witness has testified she didn't know the rules. For counsel to now simply read the rules to get her to indicate she didn't know the specific rule strikes me as just testifying into the record.

The CHAIRMAN. The objection is sustained. Counsel will ask the witness to testify.

Mr. BRYANT. Ms. Pride, your former husband and Judge Hastings were very close friends, is that correct?

Ms. PRIDE. That's correct.

Mr. BRYANT. I would like to ask you if you can conceive of Hemphill Pride purposefully doing anything to harm Judge Hastings.

Ms. PRIDE. No, I couldn't see him doing that.

Mr. BRYANT. One other question: Going to the day of October 9th, I believe you testified a few moments ago that Mr. Pride received a phone call in the hotel room, is that correct?

Ms. PRIDE. That's correct.

Mr. BRYANT. Took the child and left to go see Judge Hastings, is that correct?

Ms. PRIDE. I don't know where he went, but he left the room.

Mr. BRYANT. And he wasn't gone very long, did you say?

Ms. PRIDE. No, he wasn't gone very long.

Mr. BRYANT. Then he returned, is that right?

Ms. PRIDE. That's correct.

Mr. BRYANT. And how long did you say he stayed in the room when he came back?

Ms. PRIDE. Estimating the time, I would say between 20 or 30 minutes, but I'm not real sure. I'm just estimating the time.

Mr. BRYANT. Now, you subsequently learned, did you not, that in the period of time he was gone with the child, he was informing Judge Hastings that he had been called by a lawyer and told that there had been an arrest of their mutual friend Bill Borders and that there was an allegation of bribery in the judge's courtroom. Do you recall that?

Ms. PRIDE. I was told that?

Ms. BRYANT. Later on, you later on learned that, did you not?

Ms. PRIDE. Not during the time of the trip, but later on I hear.

Mr. BRYANT. Later on?

Ms. PRIDE. Yes.

Mr. BRYANT. I'm asking you that because I want to pose this question to you: Doesn't it seem nearly impossible that, at a moment of enormous crisis, both for William Borders, his good friend, and for Judge Hastings, his good friend, that he would come back to the room and spend 20 or 30 minutes?

Ms. PRIDE. Well, he had to bring our child back and he came in and stayed for a while.

Mr. BRYANT. What did he do when he was there?

Ms. PRIDE. When he came back?

Mr. BRYANT. Yes.

Ms. PRIDE. He sat on the side of the bed, because most of the afternoon we watched TV.

Mr. BRYANT. So, he spent that period of time watching TV?

Ms. PRIDE. I can't say—I know when he came in, when he brought our son back, I don't know exactly what he did, but I know before the phone call, before he left, that is what we were doing, watching TV and the TV was still on and I didn't have no idea what was going on, so I don't know what he did, but he——

Mr. BRYANT. It was just a hotel room, wasn't it?

Ms. PRIDE. Yes.

Mr. BRYANT. Were you in there?

Ms. PRIDE. Yes.

Mr. BRYANT. You don't know what he did during that period of time when he came back?

Ms. PRIDE. I guess at that time I would know, but I don't remember what he actually did

Mr. BRYANT. Thank you very much. No further questions.

The CHAIRMAN. Are there additional questions, Mr. Anderson?

Mr. ANDERSON. A few.

REDIRECT EXAMINATION

Ms. Pride, prior to your separation, had your husband expressed his desire to one day practice law again to you?

Ms. PRIDE. Yes, he had.

Mr. ANDERSON. And when was it you were separated, again?

Ms. PRIDE. We were separated in May of 1981.

Mr. ANDERSON. And if you recall, did your husband appear stunned or surprised, could you observe anything after he received the phone call and when he came back to the room with Elliott? Do you recall what his state of mind appears to have been?

Ms. PRIDE. I didn't notice anything. I just——

Mr. ANDERSON. Did he say anything to you during that period, that you can recall?

Ms. PRIDE. I don't recall, you know, what the conversation was. I don't recall.

Mr. ANDERSON. But you do recall, even as we sit here today, the sequence of events, that he took Elliott and came back and remained in the apartment for a period of time?

Ms. PRIDE. Yes.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Is there any additional questions by House counsel.

Mr. BRYANT. No, Mr. Chairman.

The CHAIRMAN. Senator Rudman, did you have questions?

EXAMINATION BY THE COMMITTEE

Senator RUDMAN. Ms. Pride, there's just one thing I'm a little bit confused about. When was your separation from Hemphill Pride?

Ms. PRIDE. May 1981.

Senator RUDMAN. And I assume you had a reconciliation sometime thereafter?

Ms. PRIDE. Well, we were separated at the time and he asked me about bringing our son, accompanying him to Washington, but we hadn't reconciled at that point. I guess you would say we were separated, we were probably trying to lead into it, but we were still separate, apart.

Senator RUDMAN. You were still separated, but you made an exception and you and your son went to Washington with Hemphill Pride. Was there a reconciliation thereafter?

Ms. PRIDE. No.

Senator RUDMAN. What was the situation existing between you and Mr. Pride in January, the following January, January 1982? That would have been about three months later. The trip to Washington would have been in October 1981, you were still separated, but you agreed to accompany Mr. Pride, still your husband legally, and your son to Washington. You returned to Columbia. What happened thereafter? Did you and Mr. Pride continue the attempted reconciliation?

Ms. PRIDE. No, we were still separated. We didn't ever go back together.

Senator RUDMAN. Did you see——

Ms. PRIDE. We never lived together.

Senator RUDMAN. Did you see each other from time to time during that period?

Ms. PRIDE. Yes, sir.

Senator RUDMAN. You did. Were you aware in January 1982, which was some three months later, three-and-a-half months later,

that Judge Hastings came to Columbia, South Carolina to see your husband?

Ms. PRIDE. No, I wasn't aware of that.

Senator RUDMAN. You were not aware of that.

Ms. PRIDE. No.

Senator RUDMAN. And Mr. Pride never discussed anything about some of the problems he might be having with Judge Hastings at that time?

Ms. PRIDE. No, he did not.

Senator RUDMAN. Thank you, Ms. Pride.

The CHAIRMAN. Senator Gorton?

Senator GORTON. I take it that sometime after that, Ms. Pride, you were divorced?

Ms. PRIDE. We were divorced in April 1983.

Senator GORTON. Has Mr. Pride since remarried?

Ms. PRIDE. Not to my knowledge.

Senator GORTON. Have you?

Ms. PRIDE. No. No, sir.

Senator GORTON. What is your relationship with Mr. Pride now?

Ms. PRIDE. Well, the relationship we have is what concerns our son. Other than that, that's it.

Senator GORTON. Thank you.

The CHAIRMAN. Are there other questions by members of the committee?

[No response.]

The CHAIRMAN. If not, is there any reason this witness cannot be excused?

[No response.]

The CHAIRMAN. Ms. Pride, you are excused. We very much appreciate your testimony today. You are free to leave at this point.

And this is the final witness that is prepared to testify at this time, is that correct?

Mr. ANDERSON. That's correct, we don't have anyone else.

DISPOSITION OF HOUSE MANAGERS' PROFFER RE: MASTER CHRONOLOGY CHART AND OTHER PROCEDURAL MATTERS

The CHAIRMAN. Let me mention a couple of things here that are of a procedural nature. We heard argument on the issue of the master chronology, the committee has deliberated on that and determined that the House master chronology may be used during this proceeding, of course, and before the full Senate, and House managers may, if they desire, include it as an appendix or other part of the brief which they submit to the full Senate, but the committee's judgment is it will not be admitted as an exhibit in the case.

Let me indicate on another matter, we've had concerns today and previously about the failure of Respondent's counsel to make copies of exhibits available to the House managers. Do the House managers now have copies of all the exhibits that the Respondents intend to offer?

Mr. BRYANT. Our staff attorneys say we have possession of everything on his list at the present time. It has never been made clear to us that his list was final and at this stage it would be——

The CHAIRMAN. My understanding is that the list is final, with the exception of possible resumes of some of the witnesses. Is that a correct understanding, Mr. Anderson?

Mr. ANDERSON. It is as final as I can get it at this moment. As we go through the individual witnesses and tracking back into the IC records, we may come up with things, but I do not anticipate coming up with major items, and this is simply the nature of the—this was the 30 days we needed for preparation and we are doing the best we can.

The CHAIRMAN. Here is the suggestion that the Chairman would make, if it is possible, if Respondent's counsel would get with House counsel tomorrow and be sure that the documents that Respondent intends to use on Monday have been made available to House counsel. I think a good deal of time today was spent with House counsel looking at documents which were offered into evidence or at least offered for purposes of authentication, and any of that time that we could avoid on Monday, we would certainly appreciate.

Of course, if the House also would be in a position by early Monday, with regard to those documents that are to be offered on Monday, to advise the committee of the documents that they would object to on the basis of lack of authenticity—obviously, other objections could be raised, but we would like to avoid, to the extent possible, the need for authenticating documents as we proceed here, if there is no genuine authenticity of the documents. If there is a genuine disagreement, obviously we need to know that. I think that would be helpful to the committee in expediting the proceeding.

Mr. ANDERSON. Fine, Mr. Chairman. Some of it may have to take place over the weekend, but certainly well before Monday.

The CHAIRMAN. That's fine. It doesn't have to be tomorrow. It can be over the weekend, but preferably prior to our reconvening at 9:30 Monday, because I think that would help speed the direct examination very substantially.

The other point which I believe I mentioned to both counsel during the recess was that we are somewhat concerned that the witnesses that have been identified to be called by Respondent on Monday, the total testimony and direct examination adds up to two hours and twenty minutes.

If the two witnesses that were not called today could also be available to be added to that, I think that would help insure that we can stay active, at least until 5:30, and I'm not sure that is even adequate. I wish counsel would——

Mr. ANDERSON. Mr. Chairman, I certainly will relook at the question. We are ahead of schedule, but as I read the some twelve, thirteen days, I don't think we have ever taken more than two or so hours of direct in the course of any given day, given the time allowed for cross-examination and committee examination, and that's based on the running time totals.

I certainly will try and keep witnesses ahead, but that list strikes me as optimistic, given our experience over the past——

The CHAIRMAN. Well, the only reason I might disagree with counsel is that Monday is a very productive day for us here in that the House is usually not called for votes and the Senate is usually

not called for votes, and our chance to do productive work is increased for that reason.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. A question: I wonder if I could ask counsel for the Respondent this question. I was looking at the schedule this afternoon. Exclusive of Judge Hastings as a witness, how much time does counsel expect that the other witnesses on the list will take?

Mr. ANDERSON. Mr. Chairman, I hope I have taken almost the Gramm-Rudman view of budgeting time. As I understand it, as of yesterday, we consumed 15 of the 38 hours you had allocated to us, and I think we are moving very rapidly through our list.

Senator RUDMAN. Don't take from my question any criticism. I think you ought to take as much time as you need. You have got a very serious responsibility. My question is only for planning purposes. I just want to know what you think.

Mr. ANDERSON. For planning purposes, Mr. Chairman, I would hope that they will not take more than two days, and if I can winnow over the weekend and rethink it, it may take a bit less. We are way ahead of your optimistic schedule. I have and will try and work out with counsel some questions about submitting even more prior testimony than we have done before. As much as I love Washington, I don't love it much more than the Senator in August.

Senator RUDMAN. And how long does counsel believe Judge Hastings will be on under direct?

Mr. ANDERSON. Under direct, oh, two hours. I don't think I've gone over 40 minutes on direct, and I've occasionally estimated longer, but two hours, it would seem to me, and perhaps considerable time on redirect.

Senator RUDMAN. Well, the reason I ask the question, Mr. Chairman, is because in making our plans, I would just anticipate, you know, as we discussed things ourselves on the pendency of this hearing, that my guess would be that the House is going to consume at least that or more, and my thought would be that this Senate panel might take the better part of a number of hours in examining Judge Hastings, to answer some questions for us, and so my best guess is that Judge Hastings well could occupy a day or a day and a half totally between direct, cross and the panel itself, and that is why I asked the question.

I thank you, Mr. Anderson.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Representative Bryant.

Mr. BRYANT. I thought it might be helpful to be sure that the committee doesn't overlook the prospect of the rebuttal witnesses that may be called, and I can't offer any estimate about that until we see what comes up in the next few days.

The CHAIRMAN. Does the House at this time have, based on the Respondent's case, have rebuttal witnesses they intend to call?

Mr. BRYANT. Yes, but I don't think it would be possible for us to estimate how many or who yet. I think it——

The CHAIRMAN. I think it would be useful to the committee to get an estimate of that on Monday. If the House feels that there is a need, we would like a statement from the House as to what justi-

fication they think there is. The committee has not anticipated that there would be rebuttal witnesses, but obviously we will consider that request if it is made.

Mr. BRYANT. I would point out that, of course, that will depend not entirely, but largely on the testimony of Judge Hastings, so it would be difficult for us to give you a very accurate estimate until we have heard his testimony.

The CHAIRMAN. Mr. Anderson, did you have a comment?

Mr. ANDERSON. Just let me express a view. I understood—and I realize the committee in its own view has afforded Judge Hastings and his counsel adequate time to prepare, but the sacredness of the July 10th–August 4th period was an assumption that would be a trial. I hope we are not anticipating a point where I have by my own standards rushed a bit in preparation, only to be confronted with a circumstance in which the House might have thirty days to prepare for rebuttal.

We are working on the assumption that on August 4th we are all going home to write briefs and do what we——

The CHAIRMAN. We are all working on that same assumption. But if the House does believe it needs to make a request with regard to rebuttal witnesses, we will consider that at the time.

Mr. BRYANT. We would also like to observe that, while perhaps it would be acceptable if, in discussing rebuttal witnesses, we were allowed to do so with committee counsel, but not in the presence of the Respondent, because we don't wish to be obligated to discuss what our plans might be at this stage until we see the completion of his case.

The CHAIRMAN. Why don't you advise counsel for the committee and we will determine what action the committee is willing to take.

Mr. ANDERSON. Mr. Chairman, I would just note, at times I hear Mr. Bryant saying that only the House should not be surprised by the Respondent. I'm perfectly willing to go along with the normal rules of trial, but it does strike me as to why I should not know their case, if there are not be no surprises. I just note that there is a certain inconsistency there and I will not press the point upon you.

The CHAIRMAN. Why don't we recess for the weekend, and I hope that the counsel for the two sides can resolve some of these issues while we are in recess.

We will reconvene at 9:30, on Monday.

[Whereupon, at 5:30 p.m., the committee was in recess, to reconvene on Monday, July 31, 1989, at 9:30 a.m.]

IN THE SENATE OF THE UNITED STATES
Sitting As a Court of Impeachment

In re	)
	)
IMPEACHMENT OF	)
JUDGE ALCEE L. HASTINGS	)
	)

MOTION IN LIMINE
TESTIMONY BY KENDALL SHULL AGENT SHOULD BE EXCLUDED

The House Managers vigorously oppose the admission of any testimony from Kendall Shull, the FBI the undercover agent called by the Respondent to testify as to conversations he had with Joseph Nesline. Not only will this testimony be hearsay not falling within any exception to the hearsay rule, but there is compelling evidence that Mr. Nesline was at the time mentally incompetent.

The undercover agent is being called solely to testify as to statements made to him by Joseph Nesline regarding Judge Hastings and William Borders. These statements were made in 1985, during the course of an undercover investigation of Mr. Nesline on matters wholely unrelated to the present proceedings. The statements were prompted by the fact that Special Agent Shull met with Nesline on the day before Nesline was to appear pursuant to subpoena in Atlanta before the Investigating Committee of the Eleventh Circuit. All questions to Special Agent Shull relating to what Mr. Nesline told him are hearsay, statements coming in

for the truth of the matter.

Although this Committee has taken a liberal view with respect to the admission of hearsay evidence, it has consistently striven to ensure that only that testimony that contains indicia of reliability is considered. Here, those factors are completely lacking. First, the testimony does not fall within any of the exceptions to the hearsay rule. The fact that the statements were made by the subject of an investigation do not render them admissions, since Mr. Nesline is not a party to this case. Moreover, none of his statements to the undercover agent pertaining to Judge Hastings are statements against any penal or other interest of Mr. Nesline's. Indeed, Mr. Nesline repeatedly and consistently denied any involvement in the bribery scheme, claiming that the only acttion he did had taken was to introduce Mr. Dredge to Mr. Borders, and that if he had know what was involved, he would have stopped it.

Second, and most importantly, this hearsay is particularly unreliable because of the probability that Mr. Nesline was incompetent at the time of the statements. This is manifest both from the medical reports and the observations by friends and family submitted in support of this Committee's finding of Mr. Nesline's present incompetence and from the corpus of recorded conversations with the undercover agent.

The report of Dr. James Evans, dated only one year before the October 20, 1985 statements to the undercover agent sets forth a diagnosis of organic brain syndrome, with the

differential diagnosis of either multistroke demential or Alzheimers Disease. (tab C in the Committee submission by Mr. Nesline's counsel). These conclusions are consistent with the other medical reports prepared in 1987, which were also submitted to the Committee. Dr. Evans' report further indicates that Mr. Nesline's condition had been deteriorating prior to this examination. These conclusions are confirmed by lay observers, including a police officer who wrote the sentencing judge in April, 1987, explaining that "I have personally observed the deterioration of his memory overr the last few years." (tab E) See also the letter of Mr. Nesline's wife:

> For the last four or five years I have seen a slow but steady decline in his physical and mental health. For the last three years it has been made more obvious to me that he was failing badly in these areas. I was so concerned about him in the spring and summer of 1985 that I took him to two different doctors and had several tests done on him including a brain scan. . . . (tab E)

Moreover, the nature of the diseases suffered by Mr. Nesline is that the deterioration in memory and other cognitive functions does not occur suddenly.

In addition, the recorded conversations themselves, taken as a whole, convey the full extent of Mr. Nesline's failing memory. As explained in the Memorandum submitted by Mr. Nesline's counsel (tab G):

> The tapes show that he frequently did not follow the thread of conversations and, instead, pursued unrelated tangents and digressions. He had great difficulty recalling names and appointments he has made, and commented repeatedly that he cannot remember anything unless he writes it down. For example, he asked the

> agent several dozen times what Rubenstein's name was, often several times within a few minutes. . . On occasion he repeated to agent Shull the same stories he has told before, or even earlier the same day. Most tellingly, Mr. Nesline's memory problems were so obvious to Agent Shull himself that he asked Mr. Nesline's friends about them. (Transcript reprinted at page 25 of tab G)

Mr. Nesline's incompetence is apparent even in the record which Respondent seeks to rely, the discussion of October 20, 1985. According to the 302 report of that discussion, Mr. Nesline states that several weeks after he introduced Mr. Dredge to William Borders, Mr. Nesline read in the newspapers that Mr. Dredge was an informant in the Judge Hastings matter. In fact, the public disclosure of Mr. Dredge's role occurred in October, 1981, after Borders' arrest, which was many months after Borders was retained by Dredge.

Thus, the accuracy and reliability of the statements, which are relevant only if they come in for the truth of the matter asserted, are highly questionable. The incompetence of the speaker should weigh heavily against ignoring the hearsay rule here, which is designed to guard against unreliable testimony.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
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Special Counsel

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July 31, 1989

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

MONDAY, JULY 31, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, in closed session, pursuant to notice, at 9:41 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, and Gekas.

Counsel Present: Terence J. Anderson, counsel for Judge Hastings; Patricia Graham Williams, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, assistant special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, Administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

We had scheduled at this time to begin with the testimony of Kendall Shull, but I am informed that the House managers have filed a motion *in limine* to exclude Mr. Shull's testimony. Is that correct?

Mr. GEKAS. That is correct, Mr. Chairman.

The CHAIRMAN. Why don't we follow this procedure? Why don't we have that motion *in limine* argued now, have the House managers state their reasons for it, and then have Mr. Anderson or counsel for Judge Hastings state his reason in opposition. And then we will recess for a very short period while the committee considers it.

Representative Gekas, would you want to come over to the podium?

ARGUMENT RE: HOUSE MANAGERS' MOTION *IN LIMINE* TO EXCLUDE TESTIMONY OF KENDALL SCHULL

Mr. GEKAS. Mr. Chairman and members of the committee, as the chairman has indicated, the House managers have formally filed a motion *in limine* to exclude the testimony of the pending witness, and it has done so on two grounds which intermesh. The testimony

that is proffered here is pure hearsay. It is hearsay not made proper by any of the exceptions, recognized exceptions to the hearsay rule.

First of all, the matters of hearsay that are being offered are offered by this witness as being the truth, offered for the truth of the matter, which we know—those of us who have been deeply imbedded in the legal process over the years—that is no exception to the hearsay rule; that if it's offered to say that what was said three period down the line was true or is true, then it is pure hearsay and excludable on its face.

Beyond that, the witness down the line who is not here, whose hearsay testimony is going to be tried to be made part of the record——

The CHAIRMAN. Excuse me just a second.

The VICE CHAIRMAN. My question is: Why are we doing this in a closed hearing?

The CHAIRMAN. I think the reason is we just set the thing up to do the whole proceeding here in closed hearing until we got through this witness and perhaps the next, and then this motion came up.

The VICE CHAIRMAN. I'm concerned if we do anything in a closed hearing. I don't think we ought to do anything in closed hearing other than that which is really mandatory.

The CHAIRMAN. We can open and then close it.

The VICE CHAIRMAN. Do we have to sweep the room again?

The CHAIRMAN. Let me ask Tony. What's involved in getting the hearing open in order to hear this argument on both sides, and then close it again to hear testimony if we decide to do that?

[The chairman confers with Mr. Harvey.]

Mr. HARVEY. If we opened it, the media would want to set up their cameras and so on.

The VICE CHAIRMAN. The proposal now is to hear this argument and make a decision on the argument?

The CHAIRMAN. I am informed there's a second witness after this who also would like to testify in closed session. So we're set up to hear these two witnesses in closed session before we open the session.

The VICE CHAIRMAN. What is the necessity for having this room swept?

Mr. HARVEY. That is the arrangement that the sergeant-at-arms used to ensure security for the witness.

The VICE CHAIRMAN. What is the issue on security besides his identity?

Mr. HARVEY. The two parties and the Bureau——

Mr. ANDERSON. Let me simply report, Mr. Vice Chairman, what I understand to be the circumstances.

[Discussion off the record.]

The VICE CHAIRMAN. Is the FBI here? What is the purpose for having the room swept? Would you state your name?

AGENT. This agent is involved in a very sensitive undercover operation, and to ensure the safety of that agent, the Capitol Police, as I understand it, the usual procedure is that it will be swept, and that will serve to ensure the safety of this agent. They wanted to have the room swept.

The VICE CHAIRMAN. Is there anything more involved in the identity of the agent?

AGENT. We do not want to have this agent's appearance seen by anyone. He is involved in a very sensitive undercover thing now locally.

The VICE CHAIRMAN. I understand that you don't want to have him seen to protect the identity, but what is the further purpose of having the room swept?

AGENT. You will have to direct that to the Capitol Police. The purpose is to ensure that the Capitol Police could ensure to us that this room would be safe.

Senator GORTON. We're spending so much time doing this, on the argument on this witness. Seeing as we are here, let's do it, and that's been the argument here, whether we ought to do it or not.

The VICE CHAIRMAN. Well, my view, Senator Gorton, is that we ought not have a closed hearing unless there's a real reason for it. The reason is the identity of the witness, but I don't see a purpose in having the hearing closed. I will not pursue it beyond this point; but in the future, if there are going to be any closed hearings, I think the reasons ought to be made known to the committee in advance so we have a basis for determining what the purpose is of a closed hearing.

Senator KERREY. Technically, all that is required here is for us to remove the individual. I understand you to say it's not your procedure to sweep the room. It's the Capitol Police, and the room has been swept. All that needs to be done is for the witness to be removed, and we can hear it.

AGENT. All we would ask is that the room be secured and that no cameras besides the Senate camera be here.

Senator KERREY. That is not a time-consuming process to do that. Is it?

The CHAIRMAN. I also think this argument is not very time-consuming. We have about 4 or 5 minutes at the most. At least, I have read over what Mr. Gekas has submitted here. I don't see how he could drag it on much longer than that. I assume that Mr. Anderson can respond in about the same length of time.

The VICE CHAIRMAN. Well, Mr. Chairman, as I say, I shall not pursue it beyond this. My own view is that we ought not to have closed hearings unless there's a very good reason, unless there's a reason for doing so. It appears to me the identity of the witness can be concealed without having this kind of an argument in closed session. I don't see the relationship of sweeping the room and the concealing of the identity of this witness.

AGENT. Senator Specter, I just want to assure you that his case in our view warranted this kind of procedure. Without getting into specifics of this particular case that this agent is involved with currently, it is an extremely sensitive investigation with a great deal of violence involved with this case. And our feeling is that we wanted this witness secure, to be secured, and be secured when he testified. That arrangement, from sweeping and everything else, was done by the Capitol Police at the request that we would want this room secured.

The CHAIRMAN. Do you agree that we can just go forward?

The VICE CHAIRMAN. With that repetitively inadequate explanation, I will withdraw my objection.

The CHAIRMAN. You raised some good questions, but I think the better part of valor is to go forward and hear the rest of Mr. Gekas' argument, and then hear Mr. Anderson.

Mr. GEKAS. Yes, Mr. Chairman, thank you.

I repeat, the House managers would interpose here a twin argument for excluding the testimony of the present witness as outlined in our motion in limine. The twin argument revolves around the fact that the testimony that you would hear, if you allowed this testimony, would be pure hearsay, not subject to any of the exceptions which allow in any courtroom proceeding, and presumably in this proceeding, this testimony to be heard. It's hearsay because it's offered simply to prove the truth of what that hearsay witness would have said if that witness were here in person.

Second, the individual whose hearsay testimony is offered is not a party to this case or any case that evolved throughout these proceedings, and, therefore, it does not have any admissions against interest type of exception to the hearsay rule operating in his favor, in the favor of this witness to testify as to that hearsay witness. And so we strongly object to its being heard. It's just not viable; it's not credible; it is not judiciale in any respect.

Beyond that, however, there's another thing that blends into all of this, and that's the incompetency of the witness. We have documented evidence—and we have put some of it into the formal motion that we have filed—where before and during the time that the statements, the hearsay statements were made, in fact, this individual, the one in question, was incompetent, either as a series of strokes that amounted to—strokes that caused dementia, or Alzheimer's disease or whatever is distinguishable between the two aspects of illness. He was at that time suffering from loss of memory, repeated statements, all the symptoms and signs of dementia, retarded capacity of the mind—incompetence, if you will, in the purest legal and common sense terms.

For those reasons, as we document them here by letters from doctors and from the testimony itself of the witness who would bring the hearsay, that this individual was incompetent to present any kind of credible testimony.

That's the gist of our argument.

The CHAIRMAN. Let me ask, have you submitted to the committee in any of the pleadings or something the documentation you refer to, the letters indicating he was incompetent at the time that the conversation in question took place?

Mr. GEKAS. Yes.

The CHAIRMAN. Where is that?

Mr. GEKAS. We have understood that it is a matter of record and part of the record of these proceedings because the attorney for the individual in question submitted medical reports and background as to his client's capacity, or noncapacity.

The CHAIRMAN. "At that time"? 1985?

Mr. GEKAS. Yes, as of 1985. And, of course, you have a more up to date report as to his present condition, of course. But it does relate to the time in question.

The VICE CHAIRMAN. Congressman Gekas, where are the materials that relate to 1985? In your motion, on page 3, you cite an April 1987 letter.

Mr. GEKAS. That covers the period in question. The report that you have in hand was filed after, of course, what happened in 1985. But it gauges and describes the period preceding 1987.

The VICE CHAIRMAN. Well, do you have anything more than an April 1987 letter which says that, "In the last four or five years, I have seen a slow but steady decline in his physical and mental health"?

What you're asking us to do is to make a disqualification on the grounds of competency, and my sense is that we'd have to have something specific which would relate in a reasonably conclusive way to the October 20, 1985, date that we're dealing with here.

Mr. GEKAS. As I understand it, we have a medical report. It is not just a letter but a medical report—unless you're referring to the medical report itself as being a letter.

The VICE CHAIRMAN. I'm referring to what you have in your motion. We're looking for other documents which have not yet been made available to this Senator.

The CHAIRMAN. I guess we have some documents here, but let me just clarify. On page 2 of your motion, you say a report of Dr. James Evans dated only one year before the October 20, 1985, statements to the undercover agent. Was that report a year before 1985 or a year after 1985?

Mr. GEKAS. It's after.

The CHAIRMAN. So dated only one year after is what your motion ought to say?

Mr. GEKAS. Yes. That's a misprint there. Not misprint, but mistake, period.

What we're suggesting to the committee is that the medical reports, insofar as they are able to describe the condition of the individual in the 1985 area in which we are setting ourselves, is part of the record. Just to mention in the medical report of dementia caused by strokes or Alzheimer's disease should give the committee immediate pause.

The VICE CHAIRMAN. Congressman Gekas, I'm taking a look at the October 16th letter, which says at the second paragraph, "Mr. Nesline told me"—this is a letter from Dr. James Evans—"told me that he had suffered a fractured skull years ago and has suffered from seizures as a result for which he takes dilantin and phenobarbital. However, this problem has not been thought to have affected his mental functioning other than his seizures."

Mr. GEKAS. I represent to the committee that these reports, the cumulation of them, outline—I repeat—a condition of dementia.

The VICE CHAIRMAN. Well, there's a later line here: "Since that time, Mrs. Nesline has observed her husband to be deteriorating in his general adjustment from a man who was vigorous and alert mentally to one who was confused, dull in mentation, and disoriented. He's unable to recall important dates, or his his attorney's name or when he is supposed to appear in court.

Mr. GEKAS. On page 2 of the letter or report written by Dr. Evans, it says down at the bottom part of page 2, the last paragraph, "My impression is that Mr. Nesline is presently suffering

from an organic brain syndrome with a differential diagnosis being either a multi-stroke dementia or Alzheimer's disease, the history suggesting the former, and he is currently substantially mentally impaired by this condition."

This is what I referred to in the origin of my argument, that no matter how you slice it—to use the vernacular—the individual involved has diminished capacity in 1985 at the time these events occurred, diminished capacity, perhaps nonexistent capacity to recall events or to properly put the sequence of truthful events into order because of dementia. Whether it's Alzheimer's disease or the infarction that occurs by reason of stroke that causes dementia, reduced mental capacity, those were present by reason of the only evidence that we can relate to the committee; namely, the doctor's report. We feel that the incompetency, buttressed by the hearsay, automatically should lead the committee to exclude the testimony.

The CHAIRMAN. Are there other questions of Representative Gekas before we hear from Mr. Anderson?

[No response.]

The CHAIRMAN. If not, Mr. Anderson, did you want to respond to the motion?

Mr. ANDERSON. Certainly, Mr. Chairman.

Mr. CHAIRMAN. I only saw the motion this morning, but I think I can respond fairly quickly. I am tempted on the hearsay point to simply rely on precedent. The committee has ruled in a far more attenuated circumstance than this. If you will recall, Mr. Sonnett recounted what Mr. Romano said to him on the phone, that someone named Brother had said to him on the phone that someone else had said about what a Washington attorney said. And that was admitted as substantive evidence. I could rely on precedent, but I'd rather ground my argument on principle.

First, Representative Gekas is right that these assertions will be offered in support of the truth of the matter asserted, but they go beyond that and have a different purpose. There is a question which has been raised and persisted, which is both the matter of law but also a question of fact for the Senators: Can this case now be retried in 1989, observing fundamental fairness?

Now, the question of what Mr. Nesline's testimony would have been had it been available in 1983 at the trial, and the fact it is no longer available as a matter of competency in 1989, bears on that question as well as the truth of what Agent Shull will report to you.

In terms of the hearsay rule, although I must admit I will leave these proceedings a bit bemused about my own understanding of it, Mr. Nesline was the target of a criminal investigation. He was dealing with an undercover agent. In the first instance, his statements throughout were largely admissions against interest. That's the reason why the agent was there to record them. The agent was not there to record his view of the Red Sox or the Washington Redskins. I think they are clearly in context. All of his assertions are being recorded because they are against interest and, indeed, penal interest.

I think these statements have the indicia of reliability precisely to the extent that the undercover agent had established his identity as a fellow traveler. There was no motive for Mr. Nesline to

spontaneously lie. However, those are questions that go to weight, and the agent will be available for cross-examination.

Let me turn now to the competency question. There is a piece of me which would like to say that at any point you establish Mr. Nesline's incompetence, so long as it is established, it bears upon our view of what fundamental fairness requires in these proceedings. But more than that, you have extrinsic information suggesting that there was no view within the Government of Mr. Nesline's competency at the time. They made a considerable investment in an undercover agent operation which took the agent and authorized his travel to Amsterdam because they thought Mr. Nesline was capable of providing useful information—indeed, prosecutable information. That carried on through the end of that operation which, indeed, I understand, resulted in the indictment of Joseph Nesline.

Now, while we're on the topic of hearsay, I readily concede that my admiration for the firm of Williams and Connolly for Mr. Litt and Vincent Fuller, who were Mr. Nesline's counsel, goes beyond bounds. What you are looking at in establishing competency are the submissions made post-indictment by representatives of Joseph Nesline at a time when Mr. Nesline deeply desired to avoid being tried on these indictable offenses. If we are talking about multiple levels of hearsay, you got it right there. If we are talking about that hearsay is unreliable, I take it that no lawyer who is challenging—raising an issue of the question of the competency of his counsel would ever submit a medical report that did not support that claim. I have no reason to question the qualifications of the doctor, but, indeed, if we were going to have a competency finding circa 1985, I would want both the doctors and medical information that the Government brought forward to oppose that information. I would want to cross-examine, and the committee could assess it.

But let me go one step further. We have sitting behind these shields a witness who is competent to testify concerning Mr. Nesline's mental competence during the period May 1985 until some time in 1986. I presume the Senators, through cross-examination and examination, it can be brought out what mental lapses, what observable phenomenon he was demonstrating. Competency is not necessarily an either/or proposition. There comes a time when a person is declared legally incompetent and may not be put on the stand, but there are many witnesses where the extent—indeed, one of the reasons for cross-examination is to bring out deficiencies and recall deficiencies in perception. That goes to the weight not the admissibility of the evidence.

I submit precedent and principle address the hearsay problem. I submit you have the witness right here who is capable of providing such information as may bear upon the Senate's need to assess the relative competency of Joseph Nesline at this period. I submit the reports that Representative Gekas cited are themselves excludable hearsay and hearsay which you could not consider, absent bringing the doctors in and the right to cross-examine. I submit that this witness is competent. I submit he should be permitted to testify to what Joseph Nesline told him. It should be admitted both for the truth of the matter and so the committee and the Senate may assess whether these proceedings circa 1989 remain fair.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there any questions of either Mr. Anderson or Representative Gekas before we recess to deliberate on this?

[No response.]

The CHAIRMAN. If not, we'll stand in recess for about 10 minutes.

[Recess.]

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The CHAIRMAN. The committee will come to order.

Before we go forward, Senator Specter wished to make a statement about the security precautions.

The VICE CHAIRMAN. Mr. Chairman, just for a moment or less, I want to make a comment for the record about a discussion which you and I just had about the closing of the hearing. I had, as the record will show, raised a concern about it and did not——

Judge HASTINGS. Senator.

The VICE CHAIRMAN. Yes.

Judge HASTINGS. I don't think the House managers are here. I'm sorry, sir, to interrupt you, but there is nobody here for the House managers. I apologize, Senator Specter.

The CHAIRMAN. Thank you for mentioning that. It's difficult to tell who's in the room.

The VICE CHAIRMAN. With the large screen before us, let the record show.

Senator BURNS. Nobody here but us chickens.

Judge HASTINGS. I saw one of the ladies going evidently to get them. I apologize again, sir.

[Pause.]

The CHAIRMAN. Now that the House managers are present, let me indicate before we go forward and rule on the motion, Senator Specter was making a statement about the security precautions involved here.

The VICE CHAIRMAN. Well, Mr. Chairman, I just wanted to put on the record for less than a minute the conversation which you and I just had about the importance of having the reason for a closed hearing stated, and I expressed my concern about arriving at this hearing at 9:30 this morning and finding the room closed without any prior notice. And I did not press the issue about opening the hearing in light of the fact that all we were doing was hearing a line of legal argument. So I don't think anybody can really raise too much objection to that, but I think it's important to have an open hearing unless there's some good reason shown for having the hearing closed. And I would hope that if there is some effort to close the hearing that those who want to do so would notify the committee, or at least the chairman and the vice chairman before we arrive here and find the room closed.

I yield back the balance of my time.

The CHAIRMAN. We appreciate that, and we'll go ahead on this motion in limine. The committee has deliberated on it and determined to overrule the motion and deny the motion in limine and to proceed and hear this witness.

Mr. Anderson, this witness is respondent's witness. Why don't you go forward with direct examination?

Mr. ANDERSON. Thank you, Mr. Chairman.

Has the witness been sworn, Mr. Chairman?

The CHAIRMAN. I don't believe so.

Would the witness stand and raise his right hand?

Mr. ANDERSON. Maybe you ought to leave him seated.

The CHAIRMAN. You don't have to stand. Do you, Kendall Shull, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings

shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHULL. Yes, I do.

Mr. ANDERSON. Mr. Chairman, as a preliminary matter, I would move that that portion of the closed-circuit tape that begins with Mr. Gekas' argument on the motion and ends with the end of my argument be released to C-Span and whoever else wants it. I have talked with the agents; they have no problem with that, and I think it should be at least available.

The CHAIRMAN. Is there any objection by the House managers?

The VICE CHAIRMAN. What reason do you have that anybody wants it?

Mr. ANDERSON. As a law professor, maybe historians will have some interest in the evolution of the hearsay rule.

The CHAIRMAN. The motion will be granted, and we'll have that released.

Mr. ANDERSON. Sir, would you tell the committee who you are?

TESTIMONY OF KENDALL W. SHULL

DIRECT EXAMINATION

Mr. SHULL. My name is Kendall W. Shull. I'm a special agent with the FBI in Washington, DC.

Mr. ANDERSON. And how long have you served with the FBI, sir?

Mr. SHULL. Since 1975.

Mr. ANDERSON. Directing your attention to the period May 1985 through some time in 1986, were you involved in an undercover operation concerning one Joseph Nesline?

Mr. SHULL. Yes, I was.

Mr. ANDERSON. And during that period, did you get to know Mr. Nesline?

Mr. SHULL. Yes, I did.

Mr. ANDERSON. And in your own assessment, did you gain in significant part of his confidence?

Mr. SHULL. I got to know Mr. Nesline and had several contacts with him and did get to know him to a certain degree. I don't know that I ever actually gained his complete confidence, but I was in contact with him for approximately over one year.

Mr. ANDERSON. Well, let me begin, and I want to confine myself here. Mr. Chairman, both because there is an adversity, I think, as a matter of law between the FBI and respondent's case, but also to help in terms of efficiency and avoiding areas, may I lead the witness?

The CHAIRMAN. You may to a degree.

Mr. ANDERSON. Thank you.

Let me direct your attention to May 1985, Agent Shull. Do you recall a conversation with Mr. Nesline at that time in which the name William Borders was raised?

Mr. SHULL. Yes, I do.

Mr. ANDERSON. Could you tell the committee to the best of your present recollection what Mr. Nesline told you at that time?

Mr. SHULL. During that time I was meeting with Mr. Nesline, he indicated to me that a gentleman—he was talking about his brother to begin with and the fact that the FBI had come to see Mr. Nes-

line at his brother's house. His brother got quite upset about it, and he was relating the story to me because of that. He indicated that the FBI wanted him to be a witness in a case that involved a Federal judge.

He indicated that a gentleman had come to him wanting to borrow some money at one point. He loaned the guy the money. Several years later, I think it was about 20, 25 years later, the same gentleman came to him again, at that time paid the money back to Mr. Nesline, and after paying the money to him, a short time later came back to Mr. Nesline again and indicated that he had been arrested on a drug charge and asked Mr. Nesline if he could recommend an attorney to this gentleman. Nesline indicated to me that he did, in fact, recommend an attorney from Washington by the last name of Borders, and indicated to this gentleman that had come to him for help that he could get together with Mr. Borders, and he made the introduction.

As he related the story to me, he indicated that after the two of them did get together, that they went "around him," as he referred to it, didn't tell him about what they were doing, but then ended up going—well, actually, he indicated before he told me the rest of the story that he had been to Las Vegas to a fight and had run into Mr. Borders in Las Vegas. And when Mr. Borders and Nesline happened to be on the same flight back from Las Vegas together, arrived in Washington, Mr. Borders went on then to Florida. Mr. Nesline stayed in Washington. And at this point, Nesline indicated to me that Mr. Borders went to Florida and met with an FBI agent, took money from an FBI agent, and was arrested because of it, and then indicated that Mr. Borders and the person that had come to him, borrowed the money and gave the money back to him, had, in fact, tried to do something with a Federal judge by the name of Hastings. And that was basically what he was telling me about the case, and the fact that the FBI was calling Mr. Nesline to testify and, as he referred to it, opened Pandora's box, something which he said he was not going to do because he wasn't brought up that way. And regardless of what he knew, he wasn't going to say anything about it.

Mr. ANDERSON. Now, Agent Shull, just so we can fix that, to your recollection, was the FBI calling Mr. Nesline to testify in Atlanta at that time?

Mr. SHULL. Yes. To my understanding, that's correct.

Mr. ANDERSON. And did Mr. Nesline tell you where Mr. Borders was and that he was still in contact with him?

Mr. SHULL. I believe at the time he indicated to me that Mr. Borders was incarcerated at that time.

Mr. ANDERSON. And did he tell you that he was receiving letters through an intermediary from Mr. Borders?

Mr. SHULL. He did. That was not during this conversation. That was in another conversation I had with him.

Mr. ANDERSON. I'm sorry. We'll get to that, then.

Mr. Nesline did, in fact, go to Atlanta, didn't he?

Mr. SHULL. Yes, he did.

Mr. ANDERSON. And when he came back, do you recall his complaining—I won't characterize it, but complaining to some consider-

able extent about the fact that blacks appeared to have taken over the city of Atlanta?

Mr. SHULL. Yes, I do.

Mr. ANDERSON. And, in fact, did he report to you that he and his wife had changed hotels because the hotel they were initially at appeared to be entirely occupied by blacks?

Mr. SHULL. Yes, I recall that.

Mr. ANDERSON. Now, you subsequently made an undercover trip with Mr. Nesline to Amsterdam; am I correct, Agent Shull?

Mr. SHULL. That's correct.

Mr. ANDERSON. And that trip was in October 1985?

Mr. SHULL. Yes, sir.

Mr. ANDERSON. Am I also correct that during the course of that trip the subject of Borders and his operations came up in two conversations?

Mr. SHULL. Yes, it did.

Mr. ANDERSON. Could you, to the extent you can, recount for the committee the first of those two? Fix it in time, if you can, and tell them what Mr. Nesline told you at that time about the Borders matter.

Mr. SHULL. It was approximately October 20 in 1985 when we had the first conversation concerning Mr. Borders and Judge Hastings. Nesline at that time indicated to me again that a friend of his had gotten in trouble over a narcotics charge and asked him again to recommend an attorney basically recounting the same story that he had told me in Washington earlier. He indicated again that he put the two together and that the black attorney told Nesline's friend that he would charge him $2,500 to defend him in the drug charge. Nesline indicated that as far as he was concerned at that time that was the end of the matter, and he didn't hear from his friend for several weeks.

Several weeks later, he received a phone call from his friend and arranged to meet him with his friend at the house that he was staying at at that time. Before his friend arrived at his house, he was reading a newspaper article which indicated that his friend had, in fact, been an informant for the Government in the case in Florida, and it involved Federal Judge Hastings.

So Nesline was a little concerned, obviously, and before his friend arrived, he was nervous, and he said that he imagined or assumed that his friend was wired up. And the meeting itself lasted three or four hours and that he was very uncomfortable during that meeting.

Several months later, his friend again contacted him, and he again suspected him at this time as being a Government informant, but he did come meet with Mr. Nesline. Nesline stated to me that there were three individuals that had a case in front of a Federal judge, Hastings, in Florida, and his friend, relating the story as he knew to me, went to these three individuals in front of—they had the case in front of Judge Hastings and told them that he had a black judge—attorney in his pocket. The friend of Nesline's told the black attorney who Nesline went on to identify to me as William Borders that he knew three individuals who had a problem in front of Judge Hastings.

Nesline related to me that Mr. Borders told his friend that for a certain price he could fix the case for the three individuals in front of Judge Hastings. Nesline did state to me that he did not believe that Mr. Borders had any control or influence over Judge Hastings, and although Nesline stated that he, Nesline, didn't know Judge Hastings, which was in contrast to what he had told me previously, that he did feel that Mr. Borders was scamming his friend.

Mr. ANDERSON. Agent Shull, have you had an opportunity to refresh your recollection with some FBI 302 memoranda and reports that were prepared in this case?

Mr. SHULL. Yes, I had.

Mr. ANDERSON. And, in point of fact, am I accurate that in reporting this to you, that when Nesline identified William Borders, that the friend of Borders told him, and I quote, "I know three daygos with a problem in front of Judge Hastings"?

Mr. SHULL. Yes, that's correct.

Mr. ANDERSON. Now, Agent Shull, was there a further conversation with you regarding this matter that you recall, or have we got the October conversations out?

Mr. SHULL. No. Also in that same conversation that we just spoke about, Mr. Nesline went on to tell me that Pete Chaconas, who was an individual that was a good friend of Mr. Nesline's that he met with just about every day, and that was generally there when I met with Mr. Nesline as well—he related to me that Mr. Chaconas had told Mr. Nesline that I was, in fact, an FBI agent, early on when I first started meeting Mr. Nesline, and he also went on to say that his entire knowledge of the Hastings-Borders situation came from the newspaper. He didn't know any of it firsthand. But there was another conversation some time between October 21 and 22 of 1985, also in Amsterdam, when Mr. Nesline told me that William Borders, who was at that time incarcerated in a Federal penitentiary, writes letters—Mr. Borders writes letters to a second party who then passes those letters on to Mr. Nesline. And Nesline indicated that that was how he stayed in touch with Mr. Borders.

He also went on to say that he sends $100 on a regular basis to some unnamed individual in Lewisburg, and I did not know at that time whether that had anything to do with Mr. Borders, but I don't believe it did because I don't believe Mr. Borders was in Lewisburg.

Mr. ANDERSON. Agent Shull, let me focus on two portions of that. When Mr. Nesline told you that Peter Chaconas had expressed the view that you were an undercover role, I take it that that may have raised some concern? You may have become a bit concerned about that?

Mr. SHULL. Yes, I was.

Mr. ANDERSON. And is it that kind of assertion that led you to conclude that Mr. Nesline may never have trusted you fully?

Mr. SHULL. Yes, it is. One of a few situations that occurred.

Mr. ANDERSON. Now, let me turn to some additional information that you acquired in the course of your visit to Amsterdam about Mr. Nesline and his connections. Am I correct that Mr. Nesline had considerable organized crime connections in Florida as well as Washington?

Mr. SHULL. Yes. I believe he did.

Mr. ANDERSON. And do you recall that he told you that he had had conversations with a person named Tony Salerno, who was, I think, identified by the FBI as a boss of the Genovese family, and that Mr. Salerno had told him that the RICO Act was causing considerable problems for those with whom he was associated?

Mr. SHULL. I don't recall or don't have any notes in front of me on that specific name, but I do remember a conversation about the RICO.

Mr. ANDERSON. Mr. Chairman, I don't think they're in the record before the committee in pre-trial matters, but I wonder if I might ask that Agent Shull be given a copy of a memorandum I have marked so he could refresh his recollection if it becomes necessary.

Let me show it to the House.

The CHAIRMAN. Yes, show it to the House managers. See if they have any objection.

Mr. GEKAS. We have no objection.

Mr. ANDERSON. Mr. Chairman, I would ask that Agent Shull be shown what has been marked for identification only as Respondent's Exhibit 149.

The CHAIRMAN. The witness can see the exhibit. This exhibit has not been introduced into evidence; correct?

Mr. ANDERSON. No—well, it is in the record as an appendix to a House pre-trial document, but assuming we can elicit the information through testimony, I think it would probably not be useful unless the House wishes it.

Do you have that before you, Agent Shull?

Mr. SHULL. Yes, I do.

Mr. ANDERSON. And do you recognize that as a composite report of your activities while you were with Mr. Nesline in Amsterdam?

Mr. SHULL. Yes, I do.

Mr. ANDERSON. I wonder if I could direct your attention to page 5 of that memorandum.

Mr. SHULL. OK.

Mr. ANDERSON. Now, Mr. Nesline—if I understand that—did tell you that—he did mention in the second paragraph Tony Salerno, the Genovese LCN family boss?

Mr. SHULL. That's correct.

Mr. ANDERSON. And what does LCN mean?

Mr. SHULL. La Cosa Nostra.

Mr. ANDERSON. And he also told you that Salerno was in a lot of trouble and made statements that RICO was a powerful law and was making everyone talk?

Mr. SHULL. That's correct.

Mr. ANDERSON. And in the course of that conversation, he also told you that someone, Skyball, who you identified as Francesco Scibelli, S-c-i-b-e-l-l-i, also a member of the Genovese La Cosa Nostra family; is that correct, sir?

Mr. SHULL. That's correct, yes.

Mr. ANDERSON. And he said that Mr. Scibelli sent slugs, fake coins, to Mr. Nesline both in Florida and in Washington?

Mr. SHULL. That's correct.

Mr. ANDERSON. Now, throughout this period, Mr. Nesline also indicated that he had a long-standing relationship with Helena Cellini and the Cellini family, didn't he, sir?

Mr. SHULL. Yes, he did.

Mr. ANDERSON. And could you tell the committee, to the best of your knowledge, who the Cellini family is? If you know.

Mr. SHULL. I, to be honest with you, do not know exactly. When Mr. Nesline was bringing up these names and all to me and discussing the situations, I really was unaware at the time of who these people actually were. I just reported the information as he told me.

Mr. ANDERSON. Have you——

The CHAIRMAN. Representative Gekas, did you have an objection to pose?

Mr. GEKAS. I'm listening to the questions, and I've been very tolerant before jumping up to repeat some of our objections as we have in the past on the relevancy of all these family names and La Cosa Nostra, et cetera. What relevance does it have on the issue at hand?

The CHAIRMAN. Counsel, could you explain to the committee what the relevance of this questioning is?

Mr. ANDERSON. With great pleasure. You will recall that it was permitted to testify that the Romanos, whether true or false, were members of the Genovese family. You will recall that Mr. Dredge's testimony was that Mr. Borders had to reach out through Dredge to find out who the Romanos were. The fact that Joe Nesline was familiar with the head of the Genovese family, the fact that a capo in the Genovese family was dealing with Mr. Nesline in Florida, and the fact that the Cellini family which my understanding is ran gambling for organized crime in Cuba and is based in Miami, suggests that Mr. Borders and Joseph Nesline would not have needed William Dredge to figure out who a member of the Genovese family was in Florida. I believe that this suggests the state of knowledge on Mr. Nesline's part, which would have gone to Mr. Borders, which undermines in significant measure the remarkable testimony the committee has heard from Mr. Dredge. I offer it as relevant to that purpose.

The CHAIRMAN. Well, to the extent the witness knows this information, he can testify to it. The answers he's given up to now indicate he is not the right witness with which to establish the truth of what you're just representing to the committee.

Mr. ANDERSON. Well, he has, I think, established it with respect to Salerno and Skyball Scibelli or whatever it was. He has not, I agree, established it with respect to the Cellinis.

Have you since these times learned who the Cellini family is, Agent Shull?

Mr. SHULL. To some degree, not any great degree, to be honest with you.

Mr. ANDERSON. Can you share that? Whatever degree you have, can you share it with the committee, please?

Mr. SHULL. Basically, that they were, in fact, connected, as you say, to organized crime and were responsible for some gambling houses, as you stated, in Cuba. Actually, you were refreshing my memory now.

Mr. ANDERSON. I don't mean to put things in your mind, but after I have said it, it is your memory that is refreshed, is it not?

Mr. SHULL. Yes, it is.

Mr. ANDERSON. Now, Agent Shull, just to focus on the point again—let me shift briefly to another point that's been interjected.

You were on a regular basis observing Joseph Nesline throughout the period from May 1985 until your operation ended in October 1986; is that correct?

Mr. SHULL. You say regularly?

Mr. ANDERSON. You were in frequent contact?

Mr. SHULL. Yes, I was.

Mr. ANDERSON. And did you have an opportunity to observe him in normal conversation with yourself?

Mr. SHULL. Yes, I did.

Mr. ANDERSON. Did you have an opportunity to observe him in conversations with persons that he introduced you to in Amsterdam?

Mr. SHULL. Yes, I did.

Mr. ANDERSON. In the course of those conversations, what was your view of his then mental capacity? Did you consider him to be alert and rational?

Mr. SHULL. Throughout the entire time that I dealt with Mr. Nesline, he would actually bounce back and forth. Some days he would seem to be fairly coherent and competent, other days not so good. He could often recall details of a conversation or a situation that occurred 20, 30, 40 years ago in great detail, but oftentimes and most times could not remember what was told to him or a situation that occurred just the previous day. This really was the kind of situation for the entire time that I met with Mr. Nesline. Oftentimes, he would forget things that just happened but also at times could remember in great detail things that happened many, many years ago.

Mr. ANDERSON. And in your observations, did the persons with whom you observed him in Amsterdam treat him with respect and as a rational participant in their activities?

Mr. SHULL. Yes, they did.

Mr. ANDERSON. And just to tie it up, am I correct that he identified Helena Cellini and members of her family as persons with whom he had had very substantial investments and dealings over the years?

Mr. SHULL. Yes, he had.

Mr. ANDERSON. Now, you indicated that you're not sure at what level Mr. Nesline trusted you. Did he ever discuss any activities that he may have engaged in with Santos Trafficante and Mr. Borders?

Mr. SHULL. Not to my knowledge.

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Is there cross-examination?

CROSS-EXAMINATION

Mr. GEKAS. Yes, Mr. Chairman.

When you testified just a few moments ago as to when the relationship with Nesline began, what timeframe did you put on it? When did you first begin your undercover operation and join company, as it were, with Nesline?

Mr. SHULL. It was in the winter, approximately January 1985.

Mr. GEKAS. And the first time that the name of Hastings or Dredge or Borders entered your relationship with Nesline was in May 1985; is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. And that was triggered by the incident that Nesline related to you that happened at Nesline's brother's house, when these matters were discussed, which he then related to you; is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. So between January to May 1985, in all the contacts that you had with him, he never once mentioned Dredge, Borders, or Hastings; is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. It was the brother's conversation that led him to say these things to you; is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. In the report that was rendered, dated October 20, 1985, which was filed by Special Agent Bird, I take it, recording your report about your activities with Nesline, that is where you stated to him and Bird recorded that Nesline's knowledge on most of these things came from the newspapers and that he did not know anything first-hand, is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. Was that only on one occasion that you got the impression or that he told you that his knowledge came from the newspapers and not from anything that he knew first-hand?

Mr. SHULL. There was another occasion that I recall when Mr. Nesline specifically told me that if I read the newspapers at all, then I know more about the case than he does.

Mr. GEKAS. All right. The issue of his competence has been raised by the managers, and you have testified to some of the observances that you made as to his memory, that he could remember some things that happened 40 years ago, but things that happened a few moments ago or days ago or hours ago he had difficulty in recollecting, is that correct?

Mr. SHULL. That is correct.

Mr. GEKAS. In the memorandum that is part of this record that was submitted by Mr. Nesline's counsel, it states as follows—and I ask you if this is your impression: "The tapes show that he frequently did not follow the thread of conversation and, instead, pursued unrelated tangents and digressions." Is that a fair description of your recollection of his conversations?

Mr. SHULL. Yes, I would say that's fair.

Mr. GEKAS. It further stats in the next section: "He had a great difficulty recalling names and appointments he has made and commented repeatedly that he cannot remember anything unless he writes it down." Is that an impression that you gathered? Is that a fair description that you just heard?

Mr. SHULL. Yes, he told me on several occasions that, unless he wrote something down, he would forget it. And whenever he and I were discussing something, he would take out a piece of paper and a pencil and write it down, because he would state each time he did so that, unless he did that, he would never remember it.

Mr. GEKAS. Then the next portion says: "For example, he asked the agents several dozen times what Rubenstein's name was, often several times within a few minutes." Does that comport with your recollection of how he spoke to you?

Mr. SHULL. Yes, it wasn't just Mr. Rubenstein's name, it was even my name, he couldn't remember my name a lot of times.

Mr. GEKAS. It goes on to say, "On occasion, he repeated to Agent Shull the same stories he had told before even earlier the same day." I take it that that comports with your memory of his conversations?

Mr. SHULL. I heard some stories at least 10 or 12 times.

Mr. GEKAS. All right. He said in part of all of this testimony that Peter Chaconas was involved and that you were in the presence of Peter Chaconas and Nesline during some of these conversations. Is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. Who is this Peter Chaconas?

Mr. SHULL. Peter Chaconas was an individual who was a friend of Mr. Nesline's who owned a flower shop at 18th and I Streets, N.W., Washington, DC. Mr. Nesline would frequent the restaurants located just below Mr. Chaconas' flower shop almost every day. Mr. Chaconas would always come down and speak with Mr. Nesline, whether it be in the restaurants below or at Mr. Chaconas' flower shop, but he was one of Nesline's closest friends in Washington and they saw and spoke to each other just about every day.

Mr. GEKAS. All right. In answer to some of the questions that were posed to you by Respondent's counsel, you said that at some point Nesline said that he knew Judge Hastings, is that correct?

Mr. SHULL. That's correct.

Mr. GEKAS. And at other times there were indications that were made that he could not have known him, is that correct?

Mr. SHULL. That is correct.

Mr. GEKAS. I have no further questions.

The CHAIRMAN. Is there redirect?

REDIRECT EXAMINATION

Mr. ANDERSON. Just briefly.

Agent Shull, just a couple of questions. Am I interpreting your testimony correctly, when you say that Mr. Nesline's long-term memory appears to have been better than his short-term memory?

Mr. SHULL. That's correct.

Mr. ANDERSON. And I take it his assertion that his knowledge about Mr. Borders and his friends' activities concerning Judge Hastings came from the newspaper, either had to be true or false, is that a fair characterization, either it was true or it was false?

Mr. SHULL. I would say so, yes.

Mr. ANDERSON. Now, Mr. Nesline also identified Peter Chaconas as someone with whom he had had substantial business dealings, both here and abroad, didn't he?

Mr. SHULL. Yes, he did.

Mr. ANDERSON. And he indicated that Mr. Nesline told you that there was at one point when some of his colleagues in Amsterdam thought that Peter Chaconas had been hired to come over and—I

don't know the correct jargon—assassinate someone in Amsterdam, isn't that correct?

Mr. SHULL. He said that, yes.

Mr. ANDERSON. And whatever the reality, this was a fairly expensive undercover operation, wasn't it, Agent Shull?

Mr. SHULL. I don't know what you would call expensive or not expensive. We spent quite a bit of money.

Mr. ANDERSON. The FBI does not routinely send people to Amsterdam unless they think it is likely to be a fruitful investigation?

Mr. SHULL. That's correct.

Mr. ANDERSON. And this investigation was to develop prosecutable facts concerning Joseph Nesline, wasn't it?

Mr. SHULL. Yes, it was.

Mr. ANDERSON. And the decision to conduct and continue that investigation was made in May 1985 and ended sometime in 1986, is that correct?

Mr. SHULL. That's correct.

Mr. ANDERSON. And was the operation successful in that it generated an indictment?

Mr. SHULL. Yes, it did.

Mr. ANDERSON. Thank you. Nothing further.

The CHAIRMAN. Is there additional cross-examination, Representative Gekas? Any additional cross-examination?

Mr. GEKAS. Noting further, Mr. Chairman.

The CHAIRMAN. Let me ask a couple of questions.

Mr. Shull, this FD 302 that we have been given was signed by Charles H. Bird, II, relating various conversations between Nesline and yourself. Is that a normal procedure? Wouldn't you fill it out yourself, to relate the conversations that you had with Nesline?

Mr. SHULL. In this particular situation, I was reporting the information as soon as possible to Mr. Bird while in Amsterdam. We were unable legally to record any conversations while in Amsterdam. I could not make any notes as well, because of the threat of Mr. Nesline finding those notes. So, in this particular case, unlike a meeting I would normally have with a subject and write the 302 myself and sign it, I would have to report the information verbally to Mr. Bird as soon as possible, and that's why he wrote the FD 302's.

The CHAIRMAN. He was in Washington?

Mr. SHULL. He was in Amsterdam.

The CHAIRMAN. He was in Amsterdam, but you would call him on the phone or speak to him in person and he would prepare a 302, is that——

Mr. SHULL. Yes, I would speak to him in person.

The CHAIRMAN. The key statement in here for the purposes of this case or the relevance of this whole set of testimony to this case, I gather, it comes down to Nesline's statement to Shull, "that he did not believe that Borders had any control or influence over Judge Hastings, although Nesline stated that he, Nesline personally knew the judge, he thought Borders was scamming his friend. That is I guess the key question. Did you question Nesline or do you have a view as to the basis for that statement by Nesline?

Mr. SHULL. I really——

The CHAIRMAN. Do you understand what statement I mean, the statement by Nesline that he did not believe Borders had any control over Hastings?

Mr. SHULL. Yes, Mr. Chairman, I do understand the question, and in response to the question, I don't know why he said that specifically. I can only assume that, because Mr. Nesline had been told that I was an FBI agent not only on the one occasion from Mr. Chaconas, but on another occasion as well when I happened to enter an establishment, I had another FBI agent working with me at the time, that FBI agent was recognized by another close associate of Mr. Nesline's, identified as an FBI agent to this person who then turned around and called Mr. Nesline to tell him that I had an FBI agent working with me.

I can only assume that Mr. Nesline was being extremely cautious when he dealt with me and did not want to acknowledge any involvement in this case.

The CHAIRMAN. Now, when Nesline said to you that he didn't believe Borders had any control over Hastings, did you believe him to be telling you the truth about what he thought?

Mr. SHULL. I really formed no opinion, to be honest with you, at that time. I only reported the information to Mr. Bird as it was told to me. I did not have any knowledge whatsoever of the Hastings-Borders situation at the time that Mr. Nesline was telling me this.

The CHAIRMAN. But when you later found out that he had had folks telling him you were an FBI agent, then you got to thinking that he was probably not telling you the truth, is that right?

Mr. SHULL. I can't imagine that he would be completely truthful with me, if he had any suspicions at all that I was in fact an FBI agent.

The CHAIRMAN. In your opinion, when you had that conversation with him, was he competent? I mean, if he was giving you bad information, was it on purpose or was it because he just didn't have enough mental capacity to tell you the truth?

Mr. SHULL. I don't think I really can make that determination. He was in the same state of mind at this particular time in Amsterdam as he appeared to be to me throughout the entire period of time that I was dealing with him, his long memory seemed to be good, his short-term memory extremely bad.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Special Agent Shull, you just testified, in response to a question by Senator Bingaman, that Nesline did not want to acknowledge involvement in the case. What case was that that he did not want to acknowledge involvement in?

Mr. SHULL. I was only referring to the Borders-Hastings case, the situation there.

The VICE CHAIRMAN. Well, what involvement did you think that Mr. Nesline might have had in that case?

Mr. SHULL. Again, I was not familiar with the case at all. I didn't know even who these individuals were at the time. But only because of the fact that he told me that he did not have any personal knowledge about it, and the fact that he told me on one occasion that he did know Judge Hastings, on another occasion he told me

that he didn't know Judge Hastings, I just felt that this particular statement was made for some reason but did not know what that reason was.

The VICE CHAIRMAN. Then, when there was the contradictory statement that Mr. Nesline made to you about whether he knew Judge Hastings, saying once he did and once he didn't, did you ever pursue that question, to try to find out which was in fact true?

Mr. SHULL. No, I did not.

The VICE CHAIRMAN. Special Agent Shull, when Senator Bingaman has asked you about whether you thought that Mr. Nesline was competent at the time he told you, that Nesline told you he did not think Judge Hastings was involved, but that Borders was committing a scam, on the issue of Mr. Nesline's inability to function properly, did it go to making up things or simply that he could not remember some things?

Mr. SHULL. I don't know if I can actually answer that, because some of the statements that he made to me, I don't know if he was making them up or whether he was just changing his story from day to day. Many stories I heard over and over again from Mr. Nesline, sometimes those stories would change from one time to another when he told me. Sometimes they would hold true, the facts as they had been stated before by Mr. Nesline.

The VICE CHAIRMAN. Well, your testimony, as I understand it, on the issue of his competency, relates to his being unable to remember, as opposed to making things up or—did the issue of competency go as well to the matter of making things up?

Mr. SHULL. I would certainly say that it holds truer to the fact that he couldn't remember, as opposed to making things up, although if he had been making things up, I don't think that I would be aware at the time he was telling me whether they were made up or not. I wasn't really familiar with a lot of the situations that Mr. Nesline was telling me, therefore I couldn't make a determination at the time he was telling me whether they were in fact made up or not.

The VICE CHAIRMAN. Special Agent Shull, if you had occasion to think that there was some inaccuracy in what Mr. Nesline was telling you, would you have passed that on at that time to Special Agent Bird to be recorded in the written memoranda?

Mr. SHULL. If there was a great feeling on my part that Mr. Nesline, for some reason, was in fact making something up and I would have been able to determine that and tell by Mr. Nesline's demeanor or whatever when he was telling me, I probably would have. Normally, and under almost all circumstances, 302', as we write them, are fact and do not leave any room for interpretation on our part on what the person is saying. It's only a basis for report of exactly what has been told to us.

The VICE CHAIRMAN. Special Agent Shull, did an indictment result from these activities in Amsterdam?

Mr. SHULL. Not the activities in Amsterdam, but we did pass an indictment on Mr. Nesline, because of the case that we were working. It was a minor charge of receiving stolen property. Mr. Nesline received probation and did not serve any time.

The VICE CHAIRMAN. But there was a conclusion that Mr. Nesline was competent to be indicted as a result of what happened on his personal activities in and around October 1985?

Mr. SHULL. Yes, sir.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Are there other questions from the committee? If not—Senator Burns.

Senator BURNS. I have just a question here. Special Agent Shull, you testified that Mr. Nesline told you that he didn't believe Borders had Judge Hastings in his pocket and you also testified that, on October 21 and 22, 1985, in Amsterdam, that Nesline told you that Borders, who was in jail, corresponded with a second party or wrote letters and those were passed on to Mr. Nesline. Did Mr. Nesline write letters back to Mr. Borders, do you know?

Mr. SHULL. I don't know the answer to that question. He did not indicate such to me. He only indicated to me that Mr. Borders was sending letters from jail to him, through the second party.

Senator BURNS. That is all the questions I have. Thank you.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman.

Special Agent Shull, would you recall for us your understanding of the nature and degree of the relationship between Borders and Nesline, over what period of time might they have known each other and how well? What is your impression?

Mr. SHULL. My impression was that Mr. Nesline and Mr. Borders were long-time friends. Mr. Nesline had indicated to me that, although he never used Mr. Borders in any legal matters, that he played cards with Mr. Borders. Mr. Borders, he indicated to me, liked to gamble, was a "rounder," as he called it, and gambled on just about everything, because Nesline did the same, their relationship was a long one and a fairly close one.

Senator DURENBERGER. Thank you.

The CHAIRMAN. Senator Bond?

Senator BOND. Special Agent Shull, was it your testimony that, according to Mr. Nesline, the first time he had seen Dredge after the loan of 20 years ago was at the time when Dredge had just been arrested and was seeking counsel?

Mr. SHULL. That's correct. He came to him I think he said, 20 to 25 years ago, initially, to borrow the money and he came back to him the 20 or 25 years later to repay that money. After he repaid the money, then it was a few weeks later that he came to him and indicated that he had been arrested and needed counsel.

Senator BOND. You also testified, I believe, that Nesline indicated he did not know that Borders was engaged in any kind of illicit activity, such as soliciting bribes from defendants appearing before Judge Hastings?

Mr. SHULL. That's correct.

Senator BOND. And was it therefore consistent with your expectation of one who may have been suspicious of your identity, that he would also deny having any knowledge of the involvement of a Federal judge?

Mr. SHULL. That's correct.

Senator BOND. No further questions, Mr. Chairman.

The CHAIRMAN. Are there other questions from the members of the committee?

[No response.]

If not, is there any reason this witness cannot be excused?

[No response.]

If not, this witness is excused.

Let me ask, Tony, what is the procedure now for us to be able to go on to our next witness?

Mr. HARVEY. Senator, my understanding from the Legislative Counsel is that the next witness, the retired agent of the Alcohol, Tobacco and Firearms Bureau, wants special security procedures during his testimony.

The CHAIRMAN. But do we need to recess while this witness exits and this thing—OK.

Let me ask Mr. Anderson, then, about the next witness. What is the justification for having this next witness testify in closed session?

ARGUMENT RE: TESTIMONY OF JIMMY HARMON

Mr. ANDERSON. Let me give you what I understand to be the justification. Let me say that I vastly prefer public trials, but I am willing to accept the former agent's representation. This is the person who had the established relationship with Mr. Dredge over the years. The committee has, as a matter of public record, that Jimmy Harmon was the control agent for that person.

Mr. Harmon indicates that it is his understanding that there are presently persons in prison, as a result of both information provided by Agent Dredge to him, Mr. Harmon also indicates, but we would just as soon not to have on the public record, the fact that he has information—let me see how I say this—may I ask that the next minute of transcript be sealed, just as I make these representations to you, because I don't want to violate what Mr. Harmon told me.

The CHAIRMAN. I don't know that we are in a position to seal parts of our record here. I think our earlier order with regard to Mr. Harmon was that we would not permit the release of information that related to other activities that Mr. Dredge might have been interested in or involved in.

Mr. ANDERSON. You did not permit the release of that transcript to me.

The CHAIRMAN. Right.

Mr. ANDERSON. I have interviewed Mr. Harmon and he is prepared to testify here today. I will represent to you that he has told me that if his name were on national television juxtaposed with Mr. Dredge, he believes it could create a danger to himself and to his family, that he believes there are presently outstanding two contracts unrelated to this matter on Mr. Dredge's life and that he would just as soon he and——

The CHAIRMAN. Let me ask, does the House counsel have a position? This is an issue I wish had been resolved over the three-day recess we just concluded, so that our committee would not have to be grappling with the logistics of how to handle this witness.

Mr. ANDERSON. I understand, Mr. Chairman. Just so that you understand my attempts, I first learned this when Mr. Harmon came in on Saturday. I attempted to transmit it as rapidly as I could. I was not able to find any staff for the committee or for the House managers at the——

The CHAIRMAN. Let me suggest this: Could we take Mr. Harmon as a witness at 1:30, when we come back after lunch, and go forward with another witness at this time?

Mr. ANDERSON. That is only a question as to whether it is the committee's pleasure. I know my other witnesses would be delighted if you do that. It is only a question of whether it is easier to do both these back-to-back or to resecure the room. I have no preference on that.

The CHAIRMAN. I would prefer myself, unless some member of the committee feels otherwise, that we take the witness we can take in open session at this time and proceed in open session until 12 o'clock and see if counsel for the House managers and counsel for Respondent can work out an arrangement to get the testimony, the necessary testimony of this witness after lunch. Is that acceptable?

Mr. BARON. Yes, Senator. Again, I just learned about this problem literally this morning. What Mr. Harmon has said—I interviewed him briefly this morning—he said he would like the same kind of arrangement that was set up for Mr. Dredge. Now, I don't even know whether he even knows what that means. I think he just wants some kind of security, that his name and face are not going to be all over national television.

The CHAIRMAN. Why don't you folks investigate that and see if you can't come to some agreement along with the staff of the committee as to how we are going to get this done.

Why don't we go forward with the next witness and go into open session.

Mr. ANDERSON. Mr. Chairman, do we want to—I don't know what going into open session means.

The CHAIRMAN. I don't know, either. Tony, do we need to recess for 5 minutes, or can we keep going?

Mr. HARVEY. That would be helpful?

The CHAIRMAN. Which?

Mr. HARVEY. Keep going, but it would be helpful.

The CHAIRMAN. Well, let's go ahead and keep going, because I am afraid if we recess, it will take us 15 minutes to regroup.

[Whereupon, the committee continued in open session.]

Mr. ANDERSON. Mr. Chairman, the Respondent calls Kenneth Robinson.

The CHAIRMAN. Please come forward.

Do you, Kenneth Robinson, swear and affirm that the evidence you shall give in the case—would you raise your right hand, please?

Do you, Kenneth Robinson, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ROBINSON. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF KENNETH M. ROBINSON

DIRECT EXAMINATION

Mr. ANDERSON. Mr. Robinson, would you state your full name, your present address, and tell the committee a little bit about your background?

Mr. ROBINSON. Kenneth Michael Robinson. I live in Fort Washington, Maryland. I am 45 years old. I graduated from the University of South Carolina School of Law in 1968. I'm a member of the bar of South Carolina, Maryland, the District of Columbia, several circuits, and practice now in a law firm called MonteDonico and Mason. I practice primarily civil litigation and criminal law.

Mr. ANDERSON. And at my request, did you come forward with a copy of your resume, sir?

Mr. ROBINSON. Yes, I had that faxed in Friday.

Mr. ANDERSON. Mr. Chairman, if I might approach the witness, I have given it——

The CHAIRMAN. You may.

Mr. ANDERSON. I show you what has been marked Respondent's Exhibit No. 152 for identification. Can you identify that?

Mr. ROBINSON. Yes, this is a copy of propaganda about me.

Mr. ANDERSON. Is that a copy that you authored and distributed as propaganda about Kenneth Robinson?

Mr. ROBINSON. I'm responsible for its content.

Mr. ANDERSON. Is it accurate?

Mr. ROBINSON. It should be, yes. There might be some puffing, but it should be pretty accurate.

Mr. ANDERSON. Mr. Chairman, I would move the admission for this, for whatever aid it is to the committee.

The CHAIRMAN. Is there any objection?

Mr. BRYANT. No.

The CHAIRMAN. It will be admitted. Is there an exhibit number that we are attaching to this?

Mr. ROBINSON. It looks like 152 is on there, Mr. Chairman.

The CHAIRMAN. Exhibit 152 for Respondent.

Mr. ROBINSON. Yes.

[The document referred to was marked Respondent's Exhibit No. 152 and was received in evidence.]

Mr. ANDERSON. Now, Mr. Robinson, am I correct that, since you left the U.S. Attorneys office, you have been primarily a criminal defense trial lawyer?

Mr. ROBINSON. That's true.

Mr. ANDERSON. And did there come a time when you met a man named William Dredge?

Mr. ROBINSON. Yes, in May 1981.

Mr. ANDERSON. And how did you come to meet him?

Mr. ROBINSON. I was in the middle of a so-called due process hearing on former Congressman John Jenrette, I was his lawyer. On a Saturday morning, Mr. Joe Nesline had set up a meeting to bring a potential new client to me. We were in two weeks of hearings before Judge Penn here in Washington, and on a Saturday morning he brought Mr. Dredge to see me to discuss——

Mr. ANDERSON. Now, had you known Joe Nesline prior to that?

Mr. ROBINSON. I had known him, not real well. He was represented by someone at Williams and Connolly.

Mr. ANDERSON. But you had met him and——

Mr. ROBINSON. Yes, I had known him and knew who he allegedly was.

Mr. ANDERSON. OK. Now, when you met with Mr. Dredge, to the best you can reconstruct it for the committee, what did he say to you and what was your perception of what he wanted you to do?

Mr. ROBINSON. Well, he was there for 45 minutes or an hour, and the bottom line of it is he had a drug case out of Miami, twenty or thirty thousand pills of Dilaudid or some kind of narcotic. And it was set to go to court for his initial appearance the following week in Baltimore, and he wanted a guarantee that if he paid fifty or a hundred thousand dollars that I could take care of the case, whatever the cost was.

Mr. ANDERSON. Well, now, when you say he wanted a guarantee, did you discuss that further with him?

Mr. ROBINSON. Yes. It was sort of like making some kind of a cake or something, putting a little of this, a little of that. He would talk about his case and how he could prove he wasn't guilty, but then he would suggest he could get witnesses who would say anything to prove anything. Then he would show how he had a basis to have financial—have the kind of money he has based on his background in antiques and real estate and horses. Then he would move in, but I need a guarantee, can you get to the judge or the D.A. or whoever it takes, I want a guarantee before I hire you.

I kind of tried to explain to him that that's not the way it works, you know.

Mr. ANDERSON. And did he accept your explanations?

Mr. ROBINSON. No. He kept being persistent. And so, finally, he wanted a guarantee, and at that time I'd never won a case in Baltimore, haven't won too many since, and I said, "I can give you a guarantee." And he said, "What is that?" And I said, "I guarantee you I've never won a case in Baltimore." So that wasn't what he wanted to hear, and I didn't get hired. So that was it.

Mr. ANDERSON. Now, let me ask you, how did you interpret what Mr. Dredge was asking you to do as an experienced lawyer?

Mr. ROBINSON. He wanted me to either make a guarantee that I could fix the case by hook or crook, any way possible, either pay off the judge, the D.A., the cops, fix something at the clerk's office—anything that was improper or illegal, he wanted to win the case, whatever it took. He bumped it up from fifty thousand to a hundred thousand he could put his hands on if I could make that guarantee.

Mr. ANDERSON. And at that time was there any reason why you would be especially sensitive to this kind of approach?

Mr. ROBINSON. Other than the fact my mother said not to do that?

Mr. ANDERSON. Yes, sir. Other than that fact. That's right.

Mr. ROBINSON. I was in the middle of a hearing where Congressman Jenrette had been caught on videotape making representations about the ABSCAM matters and, in fact, doing the same thing about a Senator, which I knew weren't true, so I was pretty well guarded about getting stung.

Mr. ANDERSON. Now, was Mr. Nesline present for this entire meeting?

Mr. ROBINSON. No. He went around the corner to McDonald's. He was in there maybe 10 or 15 minutes. It was my impression whatever he knew he didn't want to be in on the meeting that eventually took place where Dredge was making the representations he was making.

Mr. ANDERSON. Do you know an individual named Peter Chaconas?

Mr. ROBINSON. Yeah. Peter, bald-headed guy with a big slit across his throat like somebody cut it one time. And he's a florist in Georgetown. I saw him at the Georgetown Inn about two or three months later, and he got on my case. I was on a pretty good roll at that time, had a lot of cases, and he got on me for being so righteous that I had not taken the bribe, or whatever you want to call it, and said he had been in the car outside my office that morning——

Mr. BRYANT. Objection. This is clear hearsay, Mr. Chairman. Any testimony that Mr. Chaconas is going to offer with regard to whatever Mr. Dredge was doing is absolute hearsay if it comes in through this witness.

Mr. ANDERSON. Mr. Chairman, in ordinary circumstances, I agree with you, but I think that we have a problem of Mr. Nesline's unavailability. Whether it is true or not, it goes to the credibility of William Dredge. And on this one, I would cite precedent. I think the Senate—I think consistent with the rulings of Chair before, we have to trust that the Senators will be sufficiently sophisticated to discriminate and assign it such weight as it may be entitled to.

The CHAIRMAN. We'll overrule the objection. The witness can complete his answer.

Mr. ROBINSON. Simply stated, Mr.—Peter—I don't know really how you pronounce his last name, but Pete said he had been in the car and seen the $100,000 that Dredge had in the briefcase, and that he was willing to pay $100,000 that day if I'd given a guarantee, and I must be a real ass for not having participated in whatever was going on.

Mr. ANDERSON. Now, did there come a time when you became concerned, in particular, about your dealings with Mr. Dredge?

Mr. ROBINSON. Yeah. I was coming out of a two-month trial October 9. I remember the date because it's one of my daughters' birthdays, birthday for one of my daughters. And I heard at about 5 or 6 o'clock, as we came out getting the verdict, that Bill Borders had been arrested on a sting. And so I read the paper the next morning and saw William Dredge identified as the informant, which sort of set me off.

Mr. ANDERSON. Why did that in particular set you off?

Mr. ROBINSON. Well, because here I'd been in hearings at the time this had happened on due process, and the same prosecutor who was involved in the due process hearings against Jenrette and the same agent, Tony Amoroso, were identified as being involved in this sting. And here was the same informant, prosecutor, and FBI agent. It looked like pretty good odds. In Vegas, you wouldn't get those odds.

Mr. ANDERSON. What was the name of the prosecutor?

Mr. ROBINSON. Reid Weingarten, who has since assured me that that wasn't the case.

Mr. ANDERSON. But this is a case that's filled with coincidence, and that struck you as a startling coincidence at the time?

Mr. ROBINSON. Yes, it was a startling coincidence, and I was upset about it.

Mr. ANDERSON. And you communicated your distress to Mr. Weingarten?

Mr. ROBINSON. Yes, I did.

Mr. ANDERSON. Now, subsequent to those events, did you have an occasion to have conversations with Joe Nesline about this matter?

Mr. ROBINSON. I talked to Nesline probably after Borders' trial, and probably after Mr. Hastings' trial. I saw him at the courthouse one time.

Mr. ANDERSON. As near as you can recall, Mr. Robinson, when did that occur?

Mr. ROBINSON. Late 1983, some time in 1984.

Mr. ANDERSON. And at that time, what did Mr. Nesline say to you and what did you say to him, to the best of your recollection?

Mr. ROBINSON. Well, I just approached him. He was down there for probation or something or another. I don't know what he was there for, and I wanted to hear from him, since I hadn't seen him in a while, what he knew about the situation. And he told me Borders was puffing, and he got out-conned by a con man, and that Hastings wasn't involved.

Mr. ANDERSON. And you recall that conversation specifically?

Mr. ROBINSON. I remember that, yeah.

Mr. ANDERSON. Now, you had dealt with Mr. Nesline from time to time; am I correct?

Mr. ROBINSON. Well, I knew of him. He's like a legend, you know, in town, you know.

Mr. ANDERSON. And he knew of you?

Mr. ROBINSON. Well, I wasn't a legend, but I was trying to be.

Mr. ANDERSON. Do you have any basis for assessing Mr. Nesline's credibility when he told you this?

Mr. ROBINSON. Well, just—you know, I confronted Mr. Nesline because I had met Dredge, and I told him I was upset about this and it just didn't seem right. And Nesline's the type guy, from my knowledge of him, that if he doesn't want you to know something he just won't tell you. He's not above lying. I think if he were here he wouldn't think twice about lying to serve his best interest, but he didn't give me the impression that he would like when I asked about something that was of interest to me that personally involved me. He would tell you straight, or he wouldn't tell you anything. And I had the impression he was telling me straight, that Borders was puffing and trying to make a buck, and that Judge Hastings wasn't involved.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Is there cross-examination of this witness?

Mr. Robinson, you might just pull that microphone around to the front there.

Mr. ROBINSON. OK.

The CHAIRMAN. I think it's sort of constructed so if you don't talk directly into it it doesn't pick it up.

Mr. ROBINSON. Is that all right like that?

The CHAIRMAN. That's fine.

CROSS EXAMINATION

Mr. BRYANT. Mr. Robinson, I'm John Bryant, a member of the House of Representatives from Texas.

Mr. ROBINSON. Yes.

Mr. BRYANT. And I'm functioning as one of the prosecutors in this matter.

I'm struggling to figure out exactly where your testimony fits into the respondent's case.

Mr. ROBINSON. I didn't ask to come here, so I don't know.

Mr. BRYANT. Well, I'm glad you made that clear.

What I'd like to ask you, I guess, is: You were considering the possibility that the Government had attempted to set you up——

Mr. ROBINSON. Right.

Mr. BRYANT [continuing]. Through Dredge coming to your office; is that correct?

Mr. ROBINSON. That's right.

Mr. BRYANT. Now, you've known Reid Weingarten for a very long time, according to your transcript of your IC testimony; is that correct?

Mr. ROBINSON. I like him.

Mr. BRYANT. Did you confront him with this possibility?

Mr. ROBINSON. Yes, and he denied it. And I believed him, that he didn't know about it if it was a setup.

Mr. BRYANT. Well, did you confront anybody else about it?

Mr. ROBINSON. Well, when I sent the letter after Mr. Borders was indicted, I think I sent copies—I don't have a copy here—to just about everybody: Judge Penn, Judge Bryant, and so forth.

Mr. BRYANT. Well, back on the day when Mr. Dredge came to your office?

Mr. ROBINSON. No, I didn't tell anybody.

Mr. BRYANT. Why not?

Mr. ROBINSON. Well, for two reasons. One, you got—every time a potential criminal client tells you something, if you report them to the FBI, then you send your whole clientele to prison. You don't do that. Second——

Mr. BRYANT. No, I'm saying, in this case, if I might interrupt briefly, and I'll let you continue.

Mr. ROBINSON. All right.

Mr. BRYANT. In this case, he wasn't telling you something about his case. You said he was coming to you, in your opinion, to get you to fix a case.

Mr. ROBINSON. Right.

Mr. BRYANT. Why didn't you turn him in?

Mr. ROBINSON. Well, you're sitting there—I never did think Joe Nesline was a head of organized crime. I thought he was just a tired old man. But if you read the FBI files, he's a pretty tired dangerous old man. So you've got Joe Nesline, supposedly the head of the mob, bringing a big drug dealer to your office. Your little girl's sitting out there, and he's trying to bribe you, and, you know, so you just figure, well, I don't need to catch a bullet these days. You

know, that was—why do that? Just let them get on down the road. Don't break the law, and hope that maybe he's puffing.

Mr. BRYANT. OK. Now, let me ask you this question. I live here in a very self-important city. All of us here believe the Government won't work if we're personally not on hand to run it. So I'm not a stranger to that, but I have to say to you that it sounds to me rather self-important to suggest the U.S. Government was trying to set you up for any purpose whatsoever. Maybe I can just give you an open-ended question.

How is it that setting you up was going to help anything for anybody anywhere?

Mr. ROBINSON. Well, I'm right in the middle of a hearing, outraged that Congressman Jenrette—who I thought was a pretty darn decent person, and certainly Senator Thurmond was—would be set up. He was minding his own business, and Mr. Amoroso would send a liar like Mr. Weinberg to set him up and take him out of the Congress and take his law license, and then listen to such nonsense. Mr. Jenrette was on the tape to Amoroso talking about the bribe he was going to solicit from Senator Thurmond, who no one believed Senator Thurmond would be involved in that, because this——

Mr. BRYANT. My question is about you, though. My question is about you.

Mr. ROBINSON. Because I'm defending—I can answer that.

The CHAIRMAN. Counsel, let the witness complete his answer.

Mr. ROBINSON. I'm defending John Jenrette and very upset with the FBI tactics, and I'm in the middle of a hearing where my credibility arguing this is very important. And I thought it was kind of outrageous, as I look back in hindsight, that here I am in front of the national media, just because I'm the lawyer, trying to prove how unfair this was, and I get stung. If I'd been stung that day in the middle of due process hearings on a Congressman who's been convicted, that would really put some great weight on Jenrette's legal position which was going to go to the appellate and the Supreme Court, hopefully. And I thought it was tacky and improper.

Mr. BRYANT. What was tacky and improper?

Mr. ROBINSON. That they would try to sting somebody, the lawyer for a Congressman who's litigating the propriety of that issue in the middle of the hearing about the propriety of the issue.

Mr. BRYANT. Well, Jenrette had already been convicted, hadn't he?

Mr. ROBINSON. He still had his constitutional rights to prove that they should not solicit and make, manufacture a case against a public servant just because they don't like him.

Mr. BRYANT. Well, Mr. Robinson, I understand that, but he had already been convicted. My question doesn't go to whether Mr. Jenrette's case was important or unimportant or just or unjust. My question goes to why does anybody care about trying to sting you.

Mr. ROBINSON. I was his lawyer. I don't know why. Maybe I'm a crook and haven't been caught. I don't know. You know, they didn't—why they came at me, I don't know.

Mr. BRYANT. But you said Mr. Weingarten said they didn't come at you?

Mr. ROBINSON. That doesn't mean Amoroso wasn't involved. Amoroso is not a real credible person from our case. I don't know how he was up here, but in our case he was not.

Mr. BRYANT. In your case with Mr. Jenrette?

Mr. ROBINSON. That's right.

Mr. BRYANT. He was convicted, wasn't he?

Mr. ROBINSON. Yes, he certainly was convicted.

Mr. BRYANT. And your due process hearings failed, did they not?

Mr. ROBINSON. That's irrelevant to whether or not they properly went after the man.

Let me ask you, Mr. Congressman, if I can——

Mr. BRYANT. No, no, you brought it up. I think——

The CHAIRMAN. The witness can respond to the question if he wants.

Mr. ROBINSON. Let me try to explain something here, what happened in the Hastings matter and if you look at it fairly. John Jenrette's on a videotape talking about—he's talking to Senator Thurmond and going to get a bribe for Senator Thurmond. Amoroso knows this is bunk. Jenrette says, "I'm going to talk to the Senator in Columbia." He could have talked to him in Washington, but he waits because he knows he's going to see the Senator at a political function in Columbia that weekend, walks a block talking about the weather, but on the videotape comes back and says, "I talked to him in Columbia. It was safer."

Now, the point is you can really distort things if you have shenanigans going on. Senator Thurmond is impeccable. Nobody would ever think he did something like this. But Mr. Jenrette, because of his circumstances, being entrapped, was saying things, puffing beyond belief. And that's why I have no problem at all coming here and testifying for Judge Hastings, whom I don't really even know, because you've got the same agent involved, the same kind of person, Dredge, as Weinberg was. If I got irritated, that's probably why somebody would try to sting me. I got a big mouth.

So I don't know if I answered your question, but I tried.

Mr. BRYANT. Well, I don't know. You answered more than my question, I guess, but I'm still trying to figure out why after Jenrette was already convicted and you were in some proceedings after the case was over with, I guess to test whether or not the Government had set him up or something like that, according to your testimony, why it's credible to suggest to us that working through Dredge that somehow they'd want to set you up.

Mr. ROBINSON. Now, I haven't said they did. I said if you took those odds in Vegas, the same prosecutor, same undercover agent, Amoroso, and an informant, at the same time I was doing the Jenrette hearings, those are incredible odds of that coincidence. It seems like tic, tac, toe. But I don't know whether Dredge was out there trolling to see if he could get a corrupt lawyer and then go in and give up the lawyer and then he would have never gotten to the Borders and Hastings thing. That might have been—that's what Reid Weingarten says Dredge was doing. I don't know what Dredge was doing.

Mr. BRYANT. I don't want to argue with you because you're a witness, but I think you're IC testimony doesn't say Reid Weingarten said that's what Dredge was doing. I think it says—you said Reid

Weingarten speculated with you that if he was doing anything, maybe it was that. Isn't that correct?

Mr. ROBINSON. That's what I meant by that.

Mr. BRYANT. OK. Now, if Dredge was trying to get you to fix a case, Mr. Robinson, I assume he must have thought he had a corrupt judge. Did he talk about the judge with you?

Mr. ROBINSON. Never gave the judge's name, and now that I know the judge's name, boy, that would have been a beauty to go to Judge Kaufman. That would have been great.

You'd probably have strangled me on the floor.

Mr. BRYANT. Well, Dredge is a pretty sophisticated person with regard to criminal matters, and certainly not unaccustomed to the court system. He would have known, would he not, that you couldn't fix a case with just anybody, so he'd have to know the judge was fixable before he asked you to——

Mr. ROBINSON. No.

Mr. BRYANT [continuing]. Fix it, wouldn't he?

Mr. ROBINSON. Dredge was like throwing out there, any way you can guarantee getting me out of this mess, you know the D.A., you know the judge, you know the cops, anything you can do to guarantee it, that's what I want for my money. And I guess he was leaving it to me to talk, you know. And all I'd have to do—and lawyers do this; I guarantee you—is say, "Oh, I know—who's the judge? Judge Kaufman? Oh, yeah, Judge Kaufman rules my way all the time. You know, I see him at cocktail parties, yakety-yak," take the money and never do a thing, but rip off the client. It happens. Lawyers do that. I don't do it because you can get hurt doing it. I'm telling you, you can get hurt doing it.

But that was also on my mind. Is this what Dredge is doing? You know, is he puffing? Is he trying to get me to fix the case? Is it a setup? You don't know. So the best way to do it is just no guarantee and get on down the road.

Mr. BRYANT. Well, I have no, I guess, argument with the idea that Dredge would try to get you to fix a case if he thought he could. But it seems to me that it's fair for me to ask you why in the world he would think he could because he knows that a lawyer can't do it without the help of the judge or the district attorney or somebody like that, and you say he didn't mention the judge or the district attorney, did he?

Mr. ROBINSON. Not by name, no, he didn't.

Mr. BRYANT. Did he suggest to you that he knew that they could be gotten to?

Mr. ROBINSON. He wanted to know if I knew them. Instead of me saying, "Well, gosh"—if I say as a criminal lawyer—he says, "Can you get to the D.A. or the judge?" And I say, and a tape's running, "What is the judge's name?" I seem to be showing an interest in the bribe. But if I say, "That's ridiculous. You don't need guarantees. You got a good defense. I'm not going to do that," then he drops that and moves to another territory. The slightest nod, the slightest answer on a tape can be misread in a way that you can get indicted.

Mr. BRYANT. Mr. Robinson——

Mr. ROBINSON. You may have the privilege of being acquitted, but that doesn't save your reputation.

Mr. BRYANT. I think you're explaining your role in the conversation very adequately. I'm not asking about that. I'm asking you, did he tell you that he had any information that would indicate the judge or the district attorney or any other official could be gotten to improperly by you if he paid you a lot of money?

Mr. ROBINSON. No. He was—I call it trolling. He was throwing the line out there and seeing where I would bite.

Mr. BRYANT. All right. Now, you've been taught, no doubt, as a lawyer early in your career—all of us have, I think—that clients are going to come by and ask for a guarantee; isn't that correct?

Mr. ROBINSON. Well, you learn that. I don't think they taught you that in law school.

Mr. BRYANT. Well, is it in the code of ethics that you can't guarantee?

Mr. ROBINSON. No, you're not supposed to guarantee.

Mr. BRYANT. Well, it's in there because all of us have had the experience over the years of clients coming by and asking us to guarantee the outcome of a case; isn't that correct?

Mr. ROBINSON. I'd say a lot more of it's happened since ABSCAM than it happened before.

Mr. BRYANT. Well, you're not answering my question directly.

Mr. ROBINSON. All right. What's the question? Why it's in the canon of ethics? It's obvious to anyone, whether you're a lawyer or not, that you shouldn't guarantee something when, in fact, the system is set up so that you present both sides and let the jury call it.

Mr. BRYANT. But we're all taught ahead of time, and, in fact, the code of ethics contemplates, that clients are going to come along asking lawyers to guarantee the outcome; isn't that right?

Mr. ROBINSON. I guess. I'm not going to agree with it. I think it's clear the canon of ethics teach us not to do that. I can't say why they wrote it that way.

Mr. BRYANT. Well, I think you were right to refuse to guarantee the outcome. I don't think you were right not to tell the police that somebody asked you to fix a case——

Mr. ANDERSON. Objection, Mr. Chairman. Mr. Bryant——

Mr. ROBINSON. Let me put on the record——

Mr. ANDERSON. These are not questions.

Mr. ROBINSON. Since that time, I was shot. I haven't said who shot me, in another case. It's not related to this. You don't tell on Mafia people even if you don't think they're Mafia people without taking consequences.

Mr. BRYANT. OK. Well, let me——

Mr. ROBINSON. And I don't—maybe you haven't been shot. I can tell you it hurts, and you don't want to cooperate on that one because they'll send another one, and another one. And one day they will kill you. And I am not going to go to the FBI on a case where you have a drug dealer from Miami and a guy like Nesline's reputation, and you really aren't sure whether he's trying to see if you'll do it or whether he's throwing it on the table or whether it's a bribe, go down there and get yourself killed just to show that you're a goody-two-shoes and that you're going to do the right thing.

Mr. BRYANT. If you're in a situation in life now where both the Government's trying to get you and your clients are trying to get you; is that correct?

Mr. ROBINSON. Well, one of them shot me.

Mr. BRYANT. OK. Let me ask you one more question. You testified a moment ago, I think, that finally you brought the conversation to a close by saying to Mr. Dredge, "I guarantee you one thing. I have never won a case in Baltimore." Is that correct?

Mr. ROBINSON. That was my corn pone way of trying to put it out of his head that I was the guy.

Mr. BRYANT. OK. And at that point, finding that out, you said he got up and left; is that right?

Mr. ROBINSON. Yeah. There was a brief colloquy, and then that was it.

Mr. BRYANT. Now, what if he came to get you to do was to fix his case, what's the relevance of whether or not you had ever won a case legitimately in Baltimore?

Mr. ROBINSON. Well, in the back of your mind, if he's wearing a wire, and you give him a guarantee for the wire, and the wire is, "I'm the all-time loser in Baltimore," no one can misinterpret that. I'm not going to be hired to guarantee a loss.

Mr. BRYANT. I have no further questions.

The CHAIRMAN. Any additional direct examination?

REDIRECT EXAMINATION

Mr. ANDERSON. Just briefly, Mr. Chairman.

Mr. Robinson, am I correct in recalling at the time there were due hearings going on before before both Judge Penn and Judge Bryant?

Mr. ROBINSON. I thought Congressman Kelly was in those, but I can't vouch exactly.

Mr. ANDERSON. Well, was there ever a reported judicial decision which indicated that there was considerable substance to the due process arguments you'd been making?

Mr. ROBINSON. Judge Penn actually wrote that he was offended that it had happened, but he just didn't think the law was strong enough. He would like to have tossed it out because the way it was done was not the way he'd like to see things done.

Mr. ANDERSON. And your sensitivity was that Mr. Dredge was setting you up the same way Mr. Weingarten had set up Congressman Jenrette?

Mr. ROBINSON. Well, he was either setting me up or asking me to do something that I wasn't inclined to do. And I just figured the best thing to do is tell him I'm not going to do it that way. It doesn't work that way. And if I made that clear and he comes back to hire me, then I'm getting a good fee and he understands the rules. So it's really a three-way deal.

Mr. ANDERSON. And the question has been asked of you why you should be particularly sensitive. The Jenrette—the operation, ABSCAM, placed lawyers in the national limelight, didn't they?

Mr. ROBINSON. For a brief moment.

Mr. ANDERSON. A brief moment. You'll have another, I'm sure, Mr. Robinson. Thank you.

The CHAIRMAN. Any additional cross-examination?

RECROSS-EXAMINATION

Mr. BRYANT. Mr. Robinson, you testified a moment ago, I think, that you weren't going to make any guarantees that people that do that——

Mr. ROBINSON. Right.

Mr. BRYANT [continuing]. Is like these people involved in crime all the time, are going to get hurt in the end if they do. Isn't that right?

Mr. ROBINSON. I would think so.

Mr. BRYANT. I think that is what——

Mr. ROBINSON. Are you saying is it right I said that?

Mr. BRYANT. Yes.

Mr. ROBINSON. I said that.

Mr. BRYANT. So, if a person who is a criminal defense lawyer here in Washington, DC, told a person that he was believed to be involved in organized crime, that he could fix a case with a judge, but he knew that he couldn't, he would fully expect to have violence come his way when the whole matter finally came out in the end, would he not?

Mr. ROBINSON. Not always. Mr. Borders is who you're talking about here. Mr. Borders was raised on the streets of Washington and knew a lot of people, and Mr. Borders, quite frankly, had a reputation for puffing because of his contacts through the Carter administration, he knew the judges, he knew the people at City Hall, and that was his reputation.

Mr. BRYANT. He also knew Mr. Dredge, didn't he?

Mr. ROBINSON. Well, he met him, I understand.

Mr. BRYANT. He knew Mr. Nesline?

Mr. ROBINSON. I'm sure he knew Mr. Nesline.

Mr. BRYANT. Do you think he knew and was well-acquainted with the criminal world and knew who had the power to carry out a violent act and who didn't?

Mr. ROBINSON. Well, I can't explain Mr. Borders' state of mind. I am giving you my state of mind. Mr. Borders——

Mr. BRYANT. I didn't ask that. I asked you a question.

Mr. ROBINSON. If you are asking me does every lawyer who was approached by Nesline and Dredge think they are going to be executed if they don't deliver, I can't say that is the case. I can say that there are certain lawyers who make representations in criminal law that they can get to the judge, they can get to the D.A., and they aren't even going to approach them, but that's their way because these criminals want guarantees. They want a guarantee. If they are going to drop $100,000, they want to know that you're connected and everything is going to work out.

They may go do 30 years, and then the lawyer has another explanation for what went wrong. They do it every day, and if you don't believe that, you are really naive because I have practiced criminal law.

Mr. BRYANT. But these are lawyers who have clients that have come and hired them, aren't they, you're talking about, right?

Mr. ROBINSON. The fact that Dredge hired Borders or whatever he did with Borders——

Mr. BRYANT. Could you just answer my question?

Mr. ROBINSON [continuing]. Means nothing about Judge Hastings.

Mr. BRYANT. Were you just giving me an example of lawyers who had clients that hired them, just a moment ago, when you said indicate guarantees and so forth, and then it doesn't come out right?

Mr. ROBINSON. Clients want guarantees. Some lawyers will give them to get their fee, some won't. Some are paranoid. I'm glad I was, Borders wasn't, I'm sure he's sorry he wasn't.

Mr. BRYANT. You testified to my questions earlier on, that if you give these guarantees and it doesn't work out right, the client is going to come back around looking for you, didn't you?

Mr. ROBINSON. They can; they might not.

Mr. BRYANT. OK. Thank you.

The CHAIRMAN. Are there questions from the committee to this witness?

[No response.]

If not, any reason Mr. Robinson can't be excused?

[No response.]

You are excused. We thank you very much for your testimony. Would the Respondent please call his next witness.

Mr. ANDERSON. Respondent calls Charles Duncan.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Charles Duncan, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DUNCAN. I do.

The CHAIRMAN. Please be seated.

Mr. DUNCAN. Thank you.

TESTIMONY OF CHARLES T. DUNCAN

DIRECT EXAMINATION

Mr. ANDERSON. Good morning, Mr. Duncan.

Mr. DUNCAN. Good morning.

Mr. ANDERSON. Would you tell the committee who you are and how you're employed presently?

Mr. DUNCAN. My name is Charles T. Duncan. I am an attorney at law and I am a partner with the law firm of Reed and Priest.

Mr. ANDERSON. And how long have you been in Washington, lived in Washington, sir?

Mr. DUNCAN. I'm a native Washingtonian, I've lived here all of my life, with the exception of time for school and military service and a brief period in New York City.

Mr. ANDERSON. And where did you go to college?

Mr. DUNCAN. I went to Dartmouth College, in Hanover, New Hampshire.

Mr. ANDERSON. And where did you take your legal training?

Mr. DUNCAN. At Harvard Law School.

Mr. ANDERSON. Have you, in addition to practicing as a lawyer, also served in law school teaching?

Mr. DUNCAN. Yes, I have.

Mr. ANDERSON. Would you summarize briefly for the committee your experience there?

Mr. DUNCAN. I was Dean of Howard University Law School from 1974 to 1977. I was a professor of law there for one year thereafter, and I also taught at Howard University Law School from, roughly, 1962 to 1968.

Mr. ANDERSON. Mr. Duncan, did we ask you to come forward with a brief sketch of biographical information?

Mr. DUNCAN. Yes, you did.

Mr. ANDERSON. Mr. Vice Chairman, might I approach the witness to show him an exhibit?

The VICE CHAIRMAN [presiding]. You may.

Mr. ANDERSON. Mr. Duncan, I show you what has been marked Respondent's Exhibit 154 for identification and ask you if you can identify that.

Mr. DUNCAN. This is a copy of my biographical information which I supplied to you.

Mr. ANDERSON. And is that an accurate description you have prepared of your—a summary, I suppose, of your career?

Mr. DUNCAN. Yes, it is.

Mr. ANDERSON. Mr. Chairman, just for the aid of the committee and to keep this a bit shorter than it otherwise would be, with some of Mr. Duncan's credentials, I would move the admission of Respondent's 154.

Mr. BRYANT. No objection.

The VICE CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 154 and was received in evidence.]

Mr. ANDERSON. Now, Mr. Duncan, did you know William Borders?

Mr. DUNCAN. Yes, I did.

Mr. ANDERSON. When did you first meet him, sir?

Mr. DUNCAN. As best I recall, it was in the late 1960's or early 1970's.

Mr. ANDERSON. And in what capacity did you meet him?

Mr. DUNCAN. My first recollection of Mr. Borders was in working with him on a legal matter, he was handling the criminal aspect of it and I was handling the civil aspect of it.

Mr. ANDERSON. And did you continue thereafter to have association with Mr. Borders?

Mr. DUNCAN. I knew him from time to time as an attorney in the District of Columbia. From 1975 to 1982, I served on the DC Judicial Nominations Commission. There came a time when Mr. Borders became a member of that commission, in about 1980, and for about 2 years I was in frequent contact with him in connection with the business of the committee.

Mr. ANDERSON. Did you also participate in the affairs of the National Bar Association?

Mr. DUNCAN. I have been a member of the National Bar Association for many years. I was not active in the National Bar Association.

Mr. ANDERSON. And in connection with—did you, in the course of your time, apart from your own dealings with Mr. Borders, did you know people who knew him?

Mr. DUNCAN. Yes, I did.

Mr. ANDERSON. And what walks of life and in what community would those people come from, sir?

Mr. DUNCAN. By and large, members of the legal fraternity in the District of Columbia.

Mr. ANDERSON. And speaking now at a time prior to October 9, 1981, were you familiar with Mr. Borders' reputation truthfulness and integrity in that community?

Mr. DUNCAN. Yes, I was.

Mr. ANDERSON. What was that reputation, sir?

Mr. DUNCAN. His reputation for truthfulness and integrity as of that time was good.

Mr. ANDERSON. And based upon your own observations over the years, did you have a basis prior to October 9, 1981, to formulate an opinion as to his integrity, honesty and position in the community?

Mr. DUNCAN. Yes, I did.

Mr. ANDERSON. And could you share with the committee, sir, what your opinion at that time was?

Mr. DUNCAN. My opinion at that time was that his reputation for the characteristics you mentioned was good. That was based on the association I had with him in the case that we worked together, my infrequent contacts with him from time to time, and the close contacts I had with him when he and I both served on the DC Judicial Nominations Commission.

Mr. ANDERSON. Am I correct, sir, that the service on the DC Judicial Nominations Commission was an office you acquired by presidential appointment?

Mr. DUNCAN. The members of the commission were appointed in various ways. I was appointed by the then Mayor of the District of Columbia. I believe Mr. Borders was appointed by the President, President Carter.

Mr. ANDERSON. Now, in your dealings with Mr. Borders over the years, did you notice—how would you describe your conversations or his conversations with you?

Mr. DUNCAN. By and large, they were straightforward. I did not find him unusual in any particular way.

Mr. ANDERSON. Did you ever find—there has been some suggestion—did you ever observe him as being cryptic?

Mr. DUNCAN. That adjective has been put to me and I have responded in the affirmative, that on occasion, in conversations with him, I would find him cryptic, yes.

Mr. ANDERSON. And you were called to testify at Mr. Borders' 1980 trial, you were called by the defense, weren't you, sir?

Mr. DUNCAN. That is correct.

Mr. ANDERSON. And you did testify at that trial?

Mr. DUNCAN. I did.

Mr. ANDERSON. And you shared with the court at that time your opinions and your knowledge concerning Mr. Borders' reputation as of October 9, 1981?

Mr. DUNCAN. That is correct.

Mr. ANDERSON. Thank you, Mr. Duncan. I have no further questions.

The VICE CHAIRMAN. Cross-examine?

CROSS EXAMINATION

Mr. GEKAS. Mr. Chairman and members of the committee.

Mr. Duncan, in your relationships with Mr. Borders, did he ever display any unusual traits beyond the normal in the attorney relationships in confidential matters? What I am referring to, did he ever ask you to call him from a public telephone on a matter, rather than talking directly?

Mr. DUNCAN. No, sir, that never happened.

Mr. GEKAS. Did he ever speak to you in terms of codes or incomprehensible manner to get a message to you of any type?

Mr. DUNCAN. Not to my knowledge, beyond what I have already said, Mr. Gekas.

Mr. GEKAS. All right. Mr. Duncan, you testified—that is all, we have nothing further.

The VICE CHAIRMAN. Any redirect?

Mr. ANDERSON. No, Mr. Chairman.

The CHAIRMAN. Any questions from the committee?

[No response.]

You may be excused, Mr. Duncan.

Mr. DUNCAN. Thank you, Senator.

The VICE CHAIRMAN. Do you have another witness, Mr. Anderson?

Mr. ANDERSON. Mr. Chairman, I think I could get another witness on and off, if I could vary the sequence, and I don't know whether it would inconvenience the House. Our next witness was Andrew Chisholm. He will be more than ten minutes. After that, we had Simon Stephen Selig, who is comparable to Mr. Duncan in his information. I think——

The VICE CHAIRMAN. Why don't you proceed with the shorter witness.

Mr. ANDERSON. If there is no objection, we would call Simon Stephen Selig.

The VICE CHAIRMAN. Mr. Selig, would you raise your right hand?

Do you swear that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. SELIG. I do.

The VICE CHAIRMAN. You may proceed with the witness.

TESTIMONY OF SIMON STEPHEN SELIG

DIRECT EXAMINATION

The VICE CHAIRMAN. Professor Anderson, do you have a résumé?

Mr. ANDERSON. I don't believe Mr. Selig brought one up, no, sir, I don't believe we do.

The VICE CHAIRMAN. You may proceed.

Mr. ANDERSON. Thank you.

Mr. Selig, I think we may get you out of here by noon, as I thought we might.

Mr. SELIG. Thank you.

Mr. ANDERSON. Where do you live, sir?

Mr. SELIG. Atlanta, Georgia.

Mr. ANDERSON. How long have you been a resident of Atlanta?

Mr. SELIG. All my life, except for the 4 years I was in Washington.

Mr. ANDERSON. And what is your profession or line of work?

Mr. SELIG. I am President, Selig Enterprises, which is a privately owned real estate holding and development company.

Mr. ANDERSON. And how long have you been in the real estate business?

Mr. SELIG. Twenty years.

Mr. ANDERSON. Where did you go to school, sir, if you would just share with the committee a bit of your background?

Mr. SELIG. I went to Westminster High School, in Atlanta and the University of Georgia, and took graduate courses at Georgia State University.

Mr. ANDERSON. And you indicated that there was a period of time when you lived in Washington, DC, is that correct?

Mr. SELIG. That's correct.

Mr. ANDERSON. And when was that?

Mr. SELIG. That was 1976 until about 1981.

Mr. ANDERSON. And what was your position in Washington at that time?

Mr. SELIG. I came up here as Treasurer of then Governor Carter's Inaugural Committee, and stayed on as Deputy Assistant to President Carter in the White House.

Mr. ANDERSON. And during that period of time, sir, did you become acquainted with a man named William Borders?

Mr. SELIG. Yes, I did.

Mr. ANDERSON. Did you get to know Mr. Borders well during that period?

Mr. SELIG. I knew him fairly well, I would say.

Mr. ANDERSON. Well, what was the nature of your contact with Mr. Borders?

Mr. SELIG. Well, he was around the White House quite a bit, I'm not exactly sure why, but he was apparently a lobbyist or one that we could call on when we needed help in various matters which would include information on issues, as well as fund-raising.

Mr. ANDERSON. Now, in addition to serving as Treasurer for President Carter's Inaugural, did you also serve as Finance Chairman, National Finance Chairman for his Reelection Campaign?

Mr. SELIG. Yes, I did.

Mr. ANDERSON. And did Mr. Borders work with you on the fund-raising activities associated with that?

Mr. SELIG. Yes, I think he did, yes.

Mr. ANDERSON. Now, during your work with the Carter administration, did you also meet other Washingtonians and public officials who knew Mr. Borders?

Mr. SELIG. Yes, I did.

Mr. ANDERSON. And was that a substantial number of people?

Mr. SELIG. Quite a few.

Mr. ANDERSON. Now, from what portions of the community were the people who also knew Mr. Borders, where did they come from?

Mr. SELIG. Well, I think Bill was kind of respected or at least purported to be a leader in the black community, the legal community, and the lobbyist community.

Mr. ANDERSON. OK. Now, to the extent you can, among the people that you knew who also knew Mr. Borders prior to October 9, 1981, are you able to tell the committee what his reputation was for honesty, integrity, morality and probity?

Mr. SELIG. As far as I knew at that time, Bill had a very exceptional reputation.

Mr. ANDERSON. Now, prior to October 9, 1981, had you ever heard a negative comment about him?

Mr. SELIG. No, I had not.

Mr. ANDERSON. And based upon your own contact and work with him, were you able to, as of October 9, reach an opinion about Mr. Borders' honesty, probity, morality, and integrity?

Mr. SELIG. Yes.

Mr. ANDERSON. And what was that opinion, sir?

Mr. SELIG. I had nothing but the highest respect for him at that time.

Mr. ANDERSON. And had you observed any characteristics that would have caused you to question your opinion about him as of that time?

Mr. SELIG. No.

Mr. ANDERSON. Now, were you called by the defense to testify at Mr. Borders' trial in 1982?

Mr. SELIG. Yes, I was.

Mr. ANDERSON. And was your testimony there consistent with that you shared with the committee here?

Mr. SELIG. Yes, it was.

Mr. ANDERSON. Thank you.

The VICE CHAIRMAN. Is there cross-examination?

CROSS EXAMINATION

Mr. SYNAR. There is.

Mr. Selig, I am Congressman Mike Synar, from Oklahoma, and I represent the House as one of the managers in this proceeding, and we welcome you today.

Mr. SELIG. Thank you.

Mr. SYNAR. Let me begin. Did Mr. Borders ever ask you to call him back from any pay phones?

Mr. SELIG. No, not that I'm aware of.

Mr. SYNAR. You don't remember?

Mr. SELIG. I'm fairly certain the answer is no.

Mr. SYNAR. All right. Did Mr. Borders ever have the occasion to make luncheon or dinner plans with you?

Mr. SELIG. I don't think so.

Mr. SYNAR. OK. Did you know that Mr. Borders was a gambler?

Mr. SELIG. No.

Mr. SYNAR. And did Mr. Borders ever ask you to sign a false affidavit?

Mr. SELIG. No.

Mr. SYNAR. If he had asked you to sign a false affidavit, would that have changed your opinion of him?

Mr. SELIG. Yes.

Mr. SYNAR. That's all, Mr. Chairman.

The VICE CHAIRMAN. Redirect?

Mr. ANDERSON. No redirect.

The VICE CHAIRMAN. Any questions from the committee?

[No response.]

You may be excused. Thank you very much, Mr. Selig.

Mr. SELIG. Thank you.

The VICE CHAIRMAN. We will recess until 1:30.

[Whereupon, at 12 noon, the committee was in recess, to reconvene at 1:30 p.m., the same day.]

TESTIMONY OF JIMMY C. HARMON IN CLOSED HEARING (REDACTED)

1 AFTERNOON SESSION

2 [1:50 p.m.]

3 The Chairman. The committee will come to order.

4 We are now in a closed session, and I understand the

5 respondent has a witness who wishes to testify in closed

6 session, with the understanding that as soon as the testimony

7 is complete and we go back into open session, the transcript

8 of his testimony will be made public.

9 Is that everyone's understanding?

10 Mr. Anderson. That's my understanding, Mr. Chairman.

11 The Chairman. Would counsel for respondent go ahead and

12 call his next witness?

13 Mr. Anderson. Respondent calls James Harmon.

14 The Chairman. Would you raise your right hand, please?

15 Do you, James Harmon, swear and affirm that the evidence you

16 shall give in the case now pending between the United States

17 and Judge Alcee L. Hastings shall be the truth, the whole

18 truth, and nothing but the truth, so help you God?

19 Mr. Harmon. I do.

20 The Chairman. Please be seated.

21 Mr. Anderson. Good afternoon, sir.

22 TESTIMONY OF JIMMY C. HARMON

23 Mr. Harmon. Good afternoon.

24 Mr. Anderson. Would you speak into the microphone and

25 tell the committee your name?

1 Mr. Harmon. My name is Jimmy C. Harmon.

2 Mr. Anderson. And, Mr. Harmon, you're presently

3 retired; is that correct, sir?

4 Mr. Harmon. That's correct, yes, sir.

5 Mr. Anderson. Prior to your retirement, for whom did

6 you work?

7 Mr. Harmon. I was a special agent with the Bureau of

8 Alcohol, Tobacco, and Firearms, U.S. Treasury Department.

9 Mr. Anderson. And for how long had you served with them?

10 Mr. Harmon. Twenty-two years.

11 Mr. Anderson. Now, for a portion of your career were

12 you stationed in Miami, Florida?

13 Mr. Harmon. Yes, sir, I was.

14 Mr. Anderson. And to the best of your recollection,

15 what period of time was that?

16 Mr. Harmon. I was stationed in Miami from 1971 until

17 1979.

18 Mr. Anderson. And did there come a period when you were

19 in Miami when you met a man named William Dredge?

20 Mr. Harmon. Yes, there was.

21 Mr. Anderson. Could you tell the committee a bit about

22 how you came to meet Mr. Dredge and how your relationship

23 with him developed?

24 Mr. Harmon. I met Mr. Dredge in 1975 as a result of a

25 collateral that was mailed down to us (location deleted)

1 without recalling him, I would like to be able to proffer
2 those.
3 The Chairman. If that information is obtained, he can
4 supply that for the record without being recalled as a
5 witness.
6 Mr. Anderson, we will now go into open session.
7 [Whereupon, the committee went into open session.]

1 Mr. Harmon. No, I did not know anything about the
2 Baltimore charges until he brought that up. In fact, I
3 didn't know anything about those charges until later on down
4 the road, after the FBI's investigation was under way.
5 Senator Lieberman. Right. So, what did you think it
6 was that he meant by that, "What's it worth to turn up a
7 Federal judge"?
8 Mr. Harmon. Well, I thought he was talking in terms of
9 money.
10 Senator Lieberman. You thought he was specifically
11 talking in terms of money in that case?
12 Mr. Harmon. Yes, sir.
13 Senator Lieberman. Okay. No further questions. Thank
14 you.
15 The Chairman. Are there any other questions from the
16 committee?
17 [No response.]
18 Mr. Synar. Mr. Chairman, may we approach the bench?
19 The Chairman. Yes, Representative Synar.
20 [Pause.]
21 The Chairman. After consulting with counsel for both
22 sides, we would proceed as follows: We would like to have
23 the transcript prepared as quickly as possible and give you
24 the chance, Mr. Harmon, to review that transcript and
25 determine if there is anything in there that was said in

1 response to a question which you think should be deleted.
2 Mr. Harmon. Okay.
3 The Chairman. If you determine there is, then we would
4 consider doing that before we made public the transcript of
5 the testimony, because we are sensitive to the concern for
6 your safety and Mr. Dredge's.
7 Mr. Harmon. The only thing I could think of right
8 offhand is my beginning of the investigation.
9 The Chairman. Well, you're the best judge of that and
10 we will ask the Court Reporters to expedite the preparation
11 of that transcript. Are you available later this afternoon
12 to review that?
13 Mr. Harmon. Well, I had planned on going back home, but
14 I guess I'm here, yes.
15 The Chairman. We would appreciate you staying long
16 enough to do that, and if you would get with our staff here,
17 they could tell you as soon as that is prepared.
18 Mr. Harmon. Okay, sir.
19 The Chairman. We thank you very much.
20 Is there any reason this witness cannot be excused?
21 [No response.]
22 He is excused.
23 Mr. Anderson, if you--
24 Mr. Anderson. Subject to, if I could, Mr. Harmon was
25 going to try and fax up some information on the dates and,

concerning--

Mr. Anderson. I need to break in and ask for you to explain to the committee what a collateral is.

Mr. Harmon. A collateral is a referral from another post of duty somewhere else requesting my assistance, or Miami's assistance.

Mr. Anderson. And what did that collateral--

Mr. Harmon. That collateral was relating to a theft of guns which had been stolen in Miami and subsequently turned up in (location deleted) They requested that I interview Mr. Dredge relating to these firearms.

Mr. Anderson. And did you do that?

Mr. Harmon. Yes, I did.

Mr. Anderson. And as a result of that, did you establish a relationship with Mr. Dredge that extended beyond the immediate interview?

Mr. Harmon. Yes, it extended beyond it. I went out to interview Mr. Dredge, and Mr. Dredge informed me that he didn't want to talk to me, just go ahead and talk to his attorney. I returned to the office, and approximately two weeks later, I received a phone call from Mr. Dredge. He wanted to know if I could keep his name out of the investigation. I told him I didn't know whether I could or not, but I would check.

I then made a check with (location deleted) Mr.

1 Dredge was no way involved in this investigation. He wasn't
2 going to be indicted, or tried to be indicted, and I informed
3 Mr. Dredge that I thought I could keep his name out of it.
4 The reason I did that, because he said if I could, he would
5 help me in any way he could.
6 Mr. Anderson. And, thereafter, did Mr. Dredge help you
7 in various ways?
8 Mr. Harmon. Yes, he did.
9 Mr. Anderson. Mr. Harmon, let me refer to some of the
10 cases simply by letter, and let me start with A. But if you
11 could, describe for the committee, without disclosing any
12 information that you think shouldn't be disclosed, the nature
13 of the case, the nature of Mr. Dredge's involvement and what
14 ultimately happened. Let me start, am I correct that there
15 was a case that involved some people who had engaged in a
16 bombing?
17 Mr. Harmon. There was a major bombing investigation,
18 yes, sir.
19 Mr. Anderson. Could you tell the committee a little bit
20 about that and what Mr. Dredge did that aided you and what
21 happened in the case?
22 Mr. Harmon. This was a bombing investigation. In fact,
23 it was probably three bombings.
24 (details of investigations deleted)
25

1 The Chairman. Mr. Harmon, let me just, so it's very
2 clear to you and to everybody here, our understanding was
3 that you would not go into substantial details.
4 Mr. Harmon. Well, I would rather not go into substantial
5 details, but let me--
6 The Chairman. I think that's good because--
7 Mr. Harmon. --refer to it as a major bombing.
8 The Chairman. I think that's fine because our plan is
9 that your testimony will be made public. Even though we're
10 meeting in closed session, the testimony you give here will
11 be public record.
12 Mr. Harmon. I'll refer to it just as a major bombing.
13 The Chairman. All right.
14 Mr. Anderson. And as a result of that bombing, had
15 deaths resulted? Had people died in the course of what
16 you're describing now?
17 Mr. Harmon. People had died, yes, sir.
18 Mr. Anderson. And Mr. Dredge was able to provide you
19 with information that led, at least in part, to the solution
20 of that crime?
21 Mr. Harmon. Yes, sir. Parts of the solution to it.
22 Mr. Anderson. And there were persons who were convicted
23 thereafter in that?
24 Mr. Harmon. Yes, sir.
25 Mr. Anderson. Again, at whatever level of generality

1 that you feel comfortable with, can you tell us the next
2 matter that Mr. Dredge aided you with, sir?
3 Mr. Harmon. He aided me in another major firearms
4 investigation. Guns were being transported into Miami from
5 somewhere else in the country. The guns in turn were
6 automatic weapons; (details of investigations deleted)
7 swapped for drugs
8 Mr. Anderson. And, again, he was able to provide you
9 with information that you deemed significant in resolving
10 that matter?
11 Mr. Harmon. I did, yes, sir.
12 Mr. Anderson. And were there further cases that he
13 helped you with?
14 Mr. Harmon. He helped me with several cases. There's
15 no particular instance. It was just when I asked for his
16 assistance, I received it.
17 Mr. Anderson. Now, Mr. Harmon, the names that have come
18 out here in these proceedings thus far, as a matter of public
19 record, are Santos Trafficante, Tom and Frank Romano, William
20 Borders. Mr. Dredge, I take it, never helped help you in any
21 matter involving any of those figures?
22 Mr. Harmon. Not on those individuals, no, sir.
23 Mr. Anderson. Do you have information that indicates
24 that persons with respect to whom Mr. Dredge did help you,
25 that his life would be at risk if his or your role in those

1 things were disclosed publicly? I guess what I'm trying to
2 say, apart from Mr. Trafficante or others, is Mr. Dredge at
3 some risk today?
4 Mr. Harmon. I think not only would he be at risk, but I
5 would also.
6 Mr. Anderson. And you have had the experience, I
7 understand, of having informants who had worked with you be
8 victimized because they'd been a--
9 Mr. Harmon. Yes, sir.
10 Mr. Anderson. Now, after you served in Miami, what was
11 your next post of duty?
12 Mr. Harmon. My next post of duty was Charlotte, North
13 Carolina.
14 Mr. Anderson. And when were you transferred there?
15 Mr. Harmon. I was transferred there in 1979.
16 Mr. Anderson. After 1979, were there occasions on which
17 you had to return to Miami in connection with your duties?
18 Mr. Harmon. Yes, on several occasions.
19 Mr. Anderson. And do you recall that you were in Miami
20 for a period of time in July 1981?
21 Mr. Harmon. Yes, sir.
22 Mr. Anderson. Now, as you sit here today, do you know
23 specifically what the occasion of that visit was and when it
24 began and ended?
25 Mr. Harmon. No. I don't know the occasion. I was down

1 there for either a court trial or to reopen a case which I
2 had previously made. As I told you earlier, I don't know
3 which case this was.
4 Mr. Anderson. And I also asked you whether there were
5 records from which you might be able to fix the period of
6 time you were down there. Do such records exist?
7 Mr. Harmon. Yes, sir, they do exist.
8 Mr. Anderson. And at my request, did you call the
9 Government today to find out whether they were available to
10 us readily?
11 Mr. Harmon. I talked with the Government. Those
12 records that they had would have been placed in the archives.
13 I have the records at my house.
14 Mr. Anderson. And at my request, did you agree that
15 from those records--you kept, I think, a diary, you indicated;
16 is that correct, sir?
17 Mr. Harmon. Yes, sir.
18 Mr. Anderson. And that you would transmit to me by
19 telefax copies of what might answer that question?
20 Mr. Harmon. Those dates that you mentioned from July 1,
21 I think, to July 15th.
22 Mr. Anderson. In any event, during the course of this
23 visit, while you were--in July, were you contacted by Mr.
24 Dredge?
25 Mr. Harmon. Yes, I was.

1 Mr. Anderson. And could you tell the committee what he
2 said to you at the time he contacted you then?
3 Mr. Harmon. This was on one of my trips to Miami that I
4 was staying in a motel in south Miami. I had gotten in
5 contact with Bill by telephone, and he said he wanted to talk
6 to me and he'd come on down to the motel.
7 Do you want me to go into detail what the conversation
8 was about?
9 Mr. Anderson. Yes, I think if you could on this one.
10 Mr. Harmon. This was the best I could remember. These
11 are the basics we talked about between July 1 and July 15. I
12 think it was closer to July the 4th. Bill came and met me at
13 the motel. At this time he said, "How much would it be worth
14 to turn up a Federal judge?" Knowing my dealings with him in
15 the past, I wanted to believe him, but yet I didn't. I just
16 told him I didn't want to hear about it. It was out of my
17 jurisdiction, and I just didn't want to hear anything about
18 it.
19 Mr. Anderson. And do you recall anything further he
20 said?
21 Mr. Harmon. Our conversation was--what the conversation
22 was about, I don't know, but I was asked by the panel in
23 Atlanta did I know whether he was a black judge or a white
24 judge, and I said that I referred to him--I took it that he
25 was a black judge because evidently we had been discussing

1 blacks and Cubans, and I said it was some racism remark. And
2 what that remark was, I do not know, and I don't recall the
3 conversation that we had.
4 Mr. Anderson. Well, your recollection, I take it--when
5 you say you told the judges, that was when you testified in
6 Atlanta, was it, sir?
7 Mr. Harmon. This is what I said in Atlanta, yes, sir.
8 Mr. Anderson. And you've reviewed that testimony?
9 Mr. Harmon. Yes, sir.
10 Mr. Anderson. And you testified truthfully on that
11 occasion?
12 Mr. Harmon. Yes, sir.
13 Mr. Anderson. And your recollection, then, was at least
14 somewhat fresher than it is now?
15 Mr. Harmon. Yes. I just--I don't recall what the
16 conversation was about and what we discussed. But I state,
17 and I stated in Atlanta that it was--must have been some kind
18 of racism because I inferred from this that he was a black
19 judge instead of white.
20 Mr. Anderson. And am I correct that as you sit here
21 today you cannot--well, could you tell the committee why you
22 still recall you were in Miami on the 4th of July in 1981?
23 How did that happen to stick in your mind?
24 Mr. Harmon. No. I don't know why I was in Miami. Like
25 I said, I was either down there on a pending case that I had

1 outstanding or else I was down there to reopen a case which I
2 had previously made.
3 Mr. Anderson. Let me re-frame my question. Why did it
4 stick in your mind all this time that you were in Miami on
5 the 4th of July?
6 Mr. Harmon. Oh, it was a holiday, and I understand
7 that, according to my testimony--there, again, I'm going back
8 several years--that I had to call the office in Charlotte to
9 get permission to lay over for the holidays and to fly back to
10 Charlotte and then fly back to Miami on Monday.
11 Mr. Anderson. So from what I understand, your recollec-
12 tion of your practice is you had to be in Miami before the
13 4th and it was necessary for you to stay after, which is why
14 you had to get permission to remain over a vacation--
15 Mr. Harmon. Well, I think it was cheaper for the
16 Government for me to stay there an extra two days than it was
17 to fly back.
18 Mr. Anderson. And you will try and find us the informa-
19 tion that would enable us to determine how long you'd been
20 there?
21 Mr. Harmon. Yes, sir, I will.
22 Mr. Anderson. Now, Mr. Harmon, you later learned that
23 Mr. Dredge had approached the United States attorney in
24 Miami, did you not?
25 Mr. Harmon. Yes, I did.

1 Mr. Anderson. How did you come to know that?
2 Mr. Harmon. I received a call from Mr. Atley Wampler,
3 who is at the present time the district attorney in Miami.
4 Mr. Anderson. And what did Mr. Wampler want to know
5 from you?
6 Mr. Harmon. He wanted clarification of the fact that
7 Bill Dredge was an informant of mine and how reliable was he.
8 Mr. Anderson. And after you had satisfied yourself it
9 was, in fact, Mr. Wampler, did you give him what he wanted?
10 Mr. Harmon. Well, yes, sir. I didn't want to tell him
11 anything over the telephone. I said, "Give me a number, and
12 I'll call you back." So I called him back and verified it
13 was Mr. Wampler, and I gave him the information he requested.
14 Mr. Anderson. And did Mr. Dredge again contact you
15 subsequent to October 9, 1981? Let me represent the evidence
16 shows that that was the date on which William Borders was
17 arrested. Were you in touch with him subsequent to that?
18 Mr. Harmon. What was the date again?
19 Mr. Anderson. October 9, 1981, after the newspaper and
20 the publicity.
21 Mr. Harmon. No, I don't think I had any contact again
22 with Dredge until 19--probably '84 when I went to Atlanta to
23 testify in Atlanta.
24 Mr. Anderson. So you were not in touch with Mr. Dredge,
25 or did you and he have any contact with each other between

1 the period 1981 and 1984?

2 Mr. Harmon. Oh, yes, yes. '81 to '84, we did.

3 Mr. Anderson. So between 1981 and 1984. Did you know

4 where Mr. Dredge was or could you contact him?

5 Mr. Harmon. Yes, I did. That was my reason. I was

6 confused on the dates, but, yes, I did have contact with him.

7 Mr. Anderson. And at all points in time, was there a

8 line of communication through which you could contact Mr.

9 Dredge or he could contact you during that period?

10 Mr. Harmon. He knew where I was, and I knew where he

11 was, yes, sir.

12 Mr. Anderson. Now, Mr. Harmon, you indicated that over

13 a period of time Mr. Dredge gave you information about, I

14 take it, significant crime figures that you deemed valuable;

15 am I correct about that?

16 Mr. Harmon. That's correct, yes, sir.

17 Mr. Anderson. Do you have a view as to why William

18 Dredge gave you that information? What motivated him?

19 Mr. Harmon. I don't know what motivated him. I can't

20 say. We established a rapport, and he had no reason to doubt

21 me and I had no reason to doubt him. I told him I would

22 never use him in a court case to testify, and I've just been

23 truthful about anything with him.

24 Mr. Anderson. And during this period in the '70's, did

25 you form an opinion or have an opinion as to whether or not

1 William Dredge was engaged in illegal activities himself?

2 Mr. Harmon. I can't form an opinion because I can't say

3 for a fact what he was doing. Based on 27 years of law

4 enforcement work, I'm sure Mr. Dredge was in some kind of

5 illegal activity, or he couldn't have come up with the

6 information I requested from him.

7 Mr. Anderson. And was there ever an occasion when you

8 asked Mr. Borders to find out something about a person you

9 believed to be involved in criminal activities in Miami when

10 he could not almost immediately come up--

11 Mr. Harmon. Mr.?

12 Mr. Anderson. Dredge. I'm sorry.

13 Mr. Harmon. Dredge?

14 Mr. Anderson. When he could almost not immediately come

15 up with time, place, and who the person was?

16 Mr. Harmon. No. He came up--sometimes he'd say, "Give

17 me a couple of days and let me check on it," but he was

18 always there with the--

19 Mr. Anderson. And he was knowledgeable?

20 Mr. Harmon. Yes, sir.

21 Mr. Anderson. I have no further questions.

22 The Chairman. Is there cross-examination?

23 Mr. Baron. Good afternoon, Agent Harmon.

24 Mr. Harmon. Good afternoon.

25 Mr. Baron. Agent Harmon, you had a relationship with

1 Mr. Dredge, I believe you said beginning in 1975?
2 Mr. Harmon. 1975, yes, sir.
3 Mr. Baron. Okay. And you retired from the Treasury
4 Department in 1979; am I correct?
5 Mr. Harmon. No. 1984.
6 Mr. Baron. I'm sorry. '84. You were in Miami until
7 1979, I believe?
8 Mr. Harmon. Yes, sir.
9 Mr. Baron. Okay. During the time--from the time you
10 first formed the relationship with Mr. Dredge in '75 until
11 you retired, did you ever have any reason to doubt his
12 credibility?
13 Mr. Harmon. No, I did not.
14 Mr. Baron. How often did you come to him for assistance
15 on a matter where you needed to know something about some
16 crime figure, or you wanted to tap his information, on the
17 average?
18 Mr. Harmon. After I met him in '75, I was probably in
19 contact with him a couple times a month, at least.
20 Mr. Baron. Okay. Were those always for the purpose of
21 getting information, or was it sometimes just to touch base
22 with him?
23 Mr. Harmon. No, it was sometimes just to touch base and
24 have a cup of coffee.
25 Mr. Baron. About how many times a year would you figure

1 you actually asked Dredge for some assistance, where you
2 needed some help on something and asked him to help you?
3 Mr. Harmon. I have no way of basing or saying--
4 Mr. Baron. What's your best estimate?
5 Mr. Harmon. I really don't--I really can't say. I
6 can't say exactly how many times would I contact him for
7 information. I have no way of knowing, you know--
8 Mr. Baron. Would it be fair to characterize it on a
9 fairly regular basis you would ask him for assistance?
10 Mr. Harmon. It was on a regular basis, yes, sir.
11 Mr. Baron. Okay. In the Treasury Department, did they
12 have a system for rating the quality of informants, grading
13 system?
14 Mr. Harmon. Yes, sir.
15 Mr. Baron. And is it fair to say that Mr. Dredge was
16 rated at the highest level, excellent, as a source?
17 Mr. Harmon. Excellent. Yes, sir.
18 Mr. Baron. Okay. Now, was he ever paid?
19 Mr. Harmon. No, sir.
20 Mr. Baron. There are such things as paid informants,
21 are there not?
22 Mr. Harmon. There are.
23 Mr. Baron. Did you have any kind of agreement with him
24 that he would be allowed to engage in, you know, illegal
25 activities but that he wouldn't be touched, some kind of

1 informal immunity or some arrangement like that?

2 Mr. Harmon. No. There was no immunity, no understanding

3 at all.

4 Mr. Baron. Okay. Now, you testified that Mr. Dredge

5 was of assistance to you with regard to a major bombing

6 investigation; correct?

7 Mr. Harmon. Yes.

8 Mr. Baron. You've, however, investigated many bombing

9 investigations over the years, have you not?

10 Mr. Harmon. Yes, I have.

11 Mr. Baron. Okay. There was also a major firearms

12 investigation?

13 Mr. Harmon. Yes, sir.

14 Mr. Baron. Am I correct that with regard to the bombing

15 incident, you went to Dredge for some assistance because you

16 had some questions; is that correct?

17 Mr. Harmon. That's correct.

18 Mr. Baron. But with regard to the firearms incident,

19 it's my understanding that Dredge alerted you to the situa-

20 tion. You didn't know about it.

21 Mr. Harmon. No, I didn't know about it. He alerted me

22 to it.

23 Mr. Baron. Okay. Now, did you come to learn that--are

24 you familiar or were you familiar with the organized crime

25 situation in Miami?

1 Mr. Harmon. Yes, sir.

2 Mr. Baron. Was that your area of operations?

3 Mr. Harmon. Well, when I first went to Miami, I was

4 assigned to the organized crime section.

5 Mr. Baron. Okay. And Santos Trafficante has been

6 described by various witnesses as a crime boss, organized

7 crime boss in southern Florida. Would that be a fair charac-

8 terization based on your experience?

9 Mr. Harmon. Yes, sir.

10 Mr. Baron. Did you come to learn that subsequent to the

11 revelations involving this case that there was a contract on

12 Mr. Dredge's life put out by Trafficante?

13 Mr. Harmon. There was--this came off the street, yes,

14 sir. There was a contract placed on his head.

15 Mr. Baron. By Trafficante or his organization?

16 Mr. Harmon. By his organization, yes.

17 Mr. Baron. And was it relative to Mr. Dredge's coopera-

18 tion with regard to this matter?

19 Mr. Harmon. I couldn't say what it was relative to.

20 Mr. Baron. About when did it come to your attention

21 that there was this contract?

22 Mr. Harmon. About the same time as all this came about.

23 Mr. Baron. Now, you've described when Dredge discussed

24 the situation about--he asked you how much would it be worth

25 if he turned over a Federal judge. Do you recall--

1 Mr. Harmon. Yes, sir.

2 Mr. Baron. --you described that? At that time, did you

3 know that Mr. Dredge had difficulties involving drug charges

4 in Maryland?

5 Mr. Harmon. No, I didn't.

6 Mr. Baron. Okay. And he made a remark to the effect

7 that you characterized as a racial remark that indicated to

8 you, A, that it was a black judge involved; am I correct.

9 Mr. Harmon. Yes, sir.

10 Mr. Baron. And I looked at your testimony before the

11 Investigating Committee. It was along the lines that he was

12 concerned that blacks and Hispanics were taking over Miami or

13 taking over the country, or something along those lines?

14 Mr. Harmon. Well--

15 Mr. Baron. What's the best you recall what he said?

16 Mr. Harmon. I can't recall--well, what he said, that he

17 was saying that the blacks and Cubans were going to take

18 over. What this conversation was about, I have no idea. I'd

19 be afraid to even say because I don't remember the whole

20 conversation.

21 Mr. Baron. Let me ask you this: Over the years that

22 you knew Dredge and had this ongoing contact with him, was

23 this a topic that he would refer to on a regular basis? I

24 mean, was this an issue for him?

25 Mr. Harmon. No. This is the first time that we had

1 really discussed anything as far as I know in the whole time
2 that I've talked to him, because most everything I talked to
3 him about was I guess more or less related to the Italians.
4 Mr. Baron. During the time that Mr. Dredge was, as you
5 characterized him, an excellent source of information, did
6 you have anything on him? Did you have any leverage over him?
7 Mr. Harmon. No--
8 Mr. Baron. Such as an investigation or an indictment or
9 anything like that?
10 Mr. Harmon. No, I had no leverage whatsoever.
11 Mr. Baron. I have no further questions.
12 The Chairman. Is there additional redirect examination?
13 Mr. Anderson. Just a few, Mr. Chairman.
14 Mr. Harmon, I think you just indicated that prior to Mr.
15 Borders coming to you about a black judge, most of the
16 information he gave you had dealt with Italians; is that
17 correct?
18 Mr. Harmon. Mr. Dredge you're talking about.
19 Mr. Anderson. Mr. Dredge, yes. I'm sorry.
20 Mr. Harmon. Right. Yes, sir.
21 Mr. Anderson. And in point of fact, had not on one of
22 these collaterals you gone to Mr. Dredge to find out--on a
23 referral from Tampa, to find out whether he could determine
24 the location of an organized crime meeting place?
25 Mr. Harmon. One of those was, yes, sir.

1 Mr. Anderson. And were you aware that Santos Trafficante
2 was at least reputed to be the organized crime leader in
3 Tampa, Florida?
4 Mr. Harmon. It was my understanding he was the leader,
5 yes, sir.
6 Mr. Anderson. Now, in connection with your information
7 on the street, is there more than one contract out on William
8 Dredge?
9 Mr. Harmon. My information, there was two.
10 Mr. Anderson. And were both of those related to Santos
11 Trafficante or was the other one related to another matter?
12 Mr. Harmon. That one was related to another matter.
13 Mr. Anderson. Now, when Mr. Dredge approached you, in
14 that context he did ask you, did he--if I heard your tes-
15 timony--"What is a black judge worth?"
16 Mr. Harmon. No, he didn't say black judge. He just
17 said, "What's it worth to turn up a Federal judge?"
18 Mr. Anderson. And in that context, he was at least
19 indicating to you that there would be a quid--there would be
20 a--he expected something in exchange for the information;
21 would that be your understanding?
22 Mr. Harmon. Well, he asked what it was worth, you know.
23 That's...
24 Mr. Anderson. And you didn't know at the time that the
25 potential worth was that he was under indictment on drug

1 charges?

2 Mr. Harmon. No, I knew nothing about the drug case.

3 Mr. Anderson. No further questions, Mr. Chairman.

4 The Chairman. Is there additional recross?

5 Mr. Baron. No, sir.

6 The Chairman. I have no questions.

7 Senator Specter, do you have some questions?

8 The Vice Chairman. Yes. The only question which I know

9 to be relevant at the moment is why we closed this hearing for

10 you, and I'd like to inquire as to why you wanted it closed.

11 I don't have any quarrel with it, but I think the record

12 ought to show why we closed this hearing.

13 Mr. Harmon. (explanation deleted)

14

15

16

17 The Vice Chairman. I don't want any details on it,

18 Agent Harmon--

19 Mr. Harmon. I just--I fear for my life.

20 The Vice Chairman. --but you fear for your life with

21 respect to the bombing case?

22 Mr. Harmon. Retaliation on my association with Dredge,

23 yes, sir.

24 The Vice Chairman. On that case?

25 Mr. Harmon. Not particularly that one, but maybe on

1 another one. I stand here as retired. I don't have the
2 Government for protection any more, and this is the reason I
3 asked for the closed hearing.
4 The Vice Chairman. But that's why you wanted the closed
5 hearing?
6 Mr. Harmon. Yes, sir.
7 The Vice Chairman. Okay. Thank you very much.
8 The Chairman. Other questions? Senator Rudman?
9 Senator Rudman. I only have one question for the
10 witness. You dealt with this man over a long period of time.
11 He was very forthcoming with you as an informant. You had a
12 regular relationship with him. You were in law enforcement;
13 he was your informant. What did he want?
14 Mr. Harmon. I really don't know what he wanted. He
15 never gave any indication that he wanted anything from me.
16 Senator Rudman. Well, Mr. Harmon, you've been an agent
17 for a long time, a very long, and I'm sure good, career.
18 Isn't it your experience when you deal with informants of the
19 type of Mr. Dredge that they normally want something? Maybe
20 not right then and there, but they want to get something at
21 some point?
22 Mr. Harmon. Eventually down the road, probably if he
23 got in trouble, he would have asked for help, I'm sure he
24 would have.
25 Senator Rudman. That's really where I'm going, and I

1 want to just come back to it. Are you telling us that at no
2 time--you were in Charlotte in 1981.
3 Mr. Harmon. That's true.
4 Senator Rudman. But at no time during that entire event
5 that he had his problem up in Baltimore did he ever call you
6 or talk to you about it?
7 Mr. Harmon. I talked to him about it, but he never
8 asked for any favors, he never asked to go to talk to anybody
9 about this particular case.
10 Senator Rudman. Well, what--
11 Mr. Harmon. I had no knowledge of what he was even
12 charged with in Baltimore.
13 Senator Rudman. Did he simply tell you he had some
14 criminal problems in Baltimore?
15 Mr. Harmon. Well, no. It was related to drugs. I do
16 know and found out that he was involved in a conspiracy. My
17 understanding, it was 50,000 quaaludes. I may be wrong on
18 this. But he said he was only doing it for a favor to help
19 somebody out.
20 Senator Rudman. But at no time during that conversation
21 did he ask you to come forth, if you will, as a character
22 witness to the Government, saying here's a fellow that's been
23 pretty good to us?
24 Mr. Harmon. No. No, sir. Not at any time did he ask
25 me for any favor.

1 Senator Rudman. That strike you as strange considering
2 all the things he had done for the Government gratis over
3 that period of time?
4 Mr. Harmon. Not really, because at the time he was
5 dealing with somebody in Baltimore and the FBI, not myself.
6 I couldn't help him.
7 Senator Rudman. When did you last have contact with Mr.
8 Dredge?
9 Mr. Harmon. About two weeks ago.
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12 (questions and responses concerning
13 contacts between the witness and
14 Mr. Dredge deleted)
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5 Senator Lieberman. Okay. I'm perplexed by the same
6 questions that Senator Rudman and the others are, which is
7 this individual coming before us didn't exactly look like one
8 of America's great public servants. So why he would cooperate
9 with you all those years and then at the moment when I
10 presume he might have called you for some help, he didn't,
11 unless he was cooperating with you in the eventuality that he
12 had a case develop in your subject matter of jurisdiction.
13 It's just puzzling to me.
14 Mr. Harmon. Senator, it may sound strange to you, but
15 I've never asked him what he was doing or at any time knew
16 what he was doing. I took it that he probably was in illegal
17 activities, which is true. My main concern when I worked
18 with him was strictly guns and explosives.
19 Senator Lieberman. You've indicated that the quality of
20 the information he gave you was good, and he was rated high
21 as a source within the agency, within the Bureau. Did he
22 ever give you false information?
23 Mr. Harmon. No, sir. The only time that I asked him
24 this stuff is on specific information that I needed.
25 Senator Lieberman. Right.

1 Mr. Harmon. I stayed in regular contact with him; like
2 I told the gentlemen, it was probably twice a month. But
3 when I needed something and asked him for it, I never was
4 refused.
5 Senator Lieberman. Okay. So that either he gave you
6 information or didn't respond, but to the best of your
7 knowledge, over all that period of time, he never gave you
8 false information?
9 Mr. Harmon. No, sir. None whatsoever.
10 Senator Lieberman. Okay. Now, just to clarify one
11 other exchange you had, in that comment where he asked you
12 what's it worth to turn up a Federal judge, what did you
13 assume he was speaking about then? I thought earlier that
14 you said you thought it related to the Baltimore charges. I
15 take it from what you said now you did not.

The CHAIRMAN. Mr. Anderson, would you please call your next witness?

Mr. ANDERSON. Respondent calls Andrew Chisholm.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Andrew Chisholm, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CHISHOLM. I do.

The CHAIRMAN. Please be seated.

Mr. CHISHOLM. Thank you.

TESTIMONY OF ANDREW J. CHISHOLM

DIRECT EXAMINATION

Mr. ANDERSON. Dr. Chisholm, would you tell the committee who you are and a bit about yourself?

Mr. CHISHOLM. I'm Andrew James Chisholm, I'm from Columbia, South Carolina. I was born and reared in Augusta, Georgia. I'm presently residing in Columbia, South Carolina, where I am a professor of criminology at the University of South Carolina.

Mr. ANDERSON. And where did you go to school, Dr. Chisholm?

Mr. CHISHOLM. I finished my undergraduate studies at the University of Maryland, College Park, in 1969. I completed my master's degree at the University of Georgia in 1971, and my doctorate degree from the University of Georgia in 1974, and I have attended Harvard University and Lutheran Seminary, in Columbia, South Carolina.

Mr. ANDERSON. Now, following your completion of your degrees, Dr. Chisholm, how were you employed?

Mr. CHISHOLM. Following my degrees, in 1969, I left the University of Maryland and returned South and was employed by the State of South Carolina as a juvenile parole officer. I remained in that position until approximately about 1971, in which in between I also became Director of an Urban League program in Greenville, South Carolina, and Chairman of that County's Drug Commission.

I left Greenville in early 1971 and moved to Athens, Georgia and completed my master's there in nine months, just to keep that particular year clear. Leaving that position, I returned back to Columbia, South Carolina, and was employed by Governor John C. West to complete a correctional master plan study for the State of South Carolina. I left that position in 1972 and returned to Athens, Georgia, to complete my doctorate degree at the University of Georgia.

While completing my doctorate degree at the University of Georgia, I was also employed as an instructor in that same program, so I was also a faculty member and a doctoral student at the same time.

Completing my doctorate degree in 1974, I returned back to the Columbia, South Carolina, in fact the University of South Carolina, where I was promptly employed as an assistant professor of criminology.

Mr. ANDERSON. Did there come a time when you met a person named Williams Borders?

Mr. CHISHOLM. Yes, it was sometime later. I may also want to add that during the period of 1972 and 1974, I was also employed as a probation supervisor in the State of Georgia, I believe I have that period correct, appointed by Governor Jimmy Carter as the first black probation supervisor for that State.

In completing the doctorate and returning to Columbia in 1976, Governor Carter announced his candidacy for the office of President, and I quickly volunteered my services to work for him in the State of South Carolina.

After winning the primary, Governor Carter invited me to head up a major division of his campaign nationally——

Mr. ANDERSON. Which division was that?

Mr. CHISHOLM. The Division of Minority Affairs, at which time a deputy campaign manager, Mr. Ben Brown, introduced me to attorney William Borders.

Mr. ANDERSON. Now, what year would we be in now?

Mr. CHISHOLM. 1976.

Mr. ANDERSON. And when Mr. Brown introduced you to Mr. Borders, what did he tell you about Mr. Borders and his role?

Mr. CHISHOLM. Well, that Mr. Borders was a very important person for the campaign. Not only was Mr. Borders a well-known person around the country and the black community, but he was a well respected black attorney and, as one of the recognized leaders in the National Bar Association, that he would be able to facilitate much of the work that I had to accomplish in that division, and also that Mr. Borders would be assisting the campaign in raising money.

Mr. ANDERSON. And during the period of the campaign, were you in regular contact with Mr. Borders?

Mr. CHISHOLM. Well, I would not classify it as regular contact, but I was in contact with Mr. Borders during the campaign.

Mr. ANDERSON. And was that contact by telephone?

Mr. CHISHOLM. By telephone and in person.

Mr. ANDERSON. Did you observe anything eccentric about Mr. Borders' telephone conversations, and could you share that information with the committee?

Mr. CHISHOLM. Well, he was very, very frank and very prompt with me when I indicated to him that, because of the position that he enjoyed with the campaign and the respect, that I wanted to accentuate my activities by contacting him and seeking his advice, counsel, and generally whatever he could do to help me maximize the efforts of my division, and Mr. Borders very quickly said to me that if I called him, that he would not want to talk on the telephone with me, that he would leave his office and that he would call me back using a public telephone. I was I guess a little taken aback by this, because this was the first time that I had ever had a conversation along these lines, and I later discovered through conversations with him that Mr. Borders felt that perhaps there were folks who would listen to his phone calls, that potentially someone could have his phone tapped.

Mr. ANDERSON. And in point of fact, did he employ that means when you and he spoke by telephone?

Mr. CHISHOLM. I would assume so, because when I called, whenever I did, which was not on a regular basis, he just simply said I will call you back and then he did.

Mr. ANDERSON. Now, did you remain in contact with Mr. Borders throughout the period of the Carter administration?

Mr. CHISHOLM. I did. I was a ranking transition member for the Department of Justice under Mr. Carter, as well as an advisor on criminal justice matters to Mr. Carter's administration, as well as somewhat of a political activist, if I can put it that way, in terms of keeping in contact with the various folks across the country that we had created a relationship with under the guise that the President would run for a second term and we wanted to hold those pieces together. So, from that perspective, I stayed in contact with Mr. Borders and maintained my relationship.

Mr. ANDERSON. And did that continue through the year 1981?

Mr. CHISHOLM. It continued from the election all the way through 1981.

Mr. ANDERSON. Now, do you recall that you testified before a group of five judges in Atlanta?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. And let me frame a question they asked you—well, do you recall yourself as being in regular contact with Mr. Borders during the year 1981?

Mr. CHISHOLM. Well, regular I guess means kind of persistent and I was not in regular contact with him.

Mr. ANDERSON. Well, about how many times would you estimate you had occasion to talk with Mr. Borders?

Mr. CHISHOLM. I would say many times I had an opportunity to talk with him, but they were not on a routine regular kind of basis.

Mr. ANDERSON. Do you recall that the question was raised before the Investigating Committee that they could only find one call documented in Mr. Borders' telephone records?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. When they confronted you with that, what did you tell them then?

Mr. CHISHOLM. Well, of course, I was not docile in Columbia, South Carolina, that in the capacity that I worked in and enjoyed politically, I did a lot of traveling and many of my travels were right here in Washington, and many of my contacts with Mr. Borders were the outright results of those travels, as well as political events that I was often invited to attend, and Mr. Borders was often at those particular political events, and during those visits, when we had a chance to interact, we had very friendly conversations.

Mr. ANDERSON. Do you recall him during that period continuing to use this pay phone method of contact when you did speak by telephone?

Mr. CHISHOLM. Well, he made it very clear to me in 1976 that that was his modus operandi, and I assume that even through 1981, and respected, quite frankly, that that was the mode of communication telephonically between Mr. Borders and I.

Mr. ANDERSON. Now, Mr. Chisholm, prior to October 9, 1981, with all of the information and experience you had concerning Mr. Borders' modus operandi on whatever matters, based upon your

dealings with him, did you have an opinion with respect to his political influence, his integrity, his honesty and his political commitments?

Mr. CHISHOLM. Well, I will state with the last first. Certainly, I felt like he had a very strong political commitment to President Carter and I respected that, because like him, I have a very strong commitment to President Carter even today, and I respected that and really sensed at a very high level his commitment. His involvement was still very much active, not only in the Washington community, but across the country, and, quite frankly, my perception of Mr. Borders was that he was an unusual type person. I classify that in terms of his careful nature, his suspecting nature of people in general, and the fact that, from a clandestine standpoint, he protected his own personal integrity by the use of public telephones, and so I saw it form that perspective and, believe me, as I think about that, I can't help but examine my own naivete as a criminologist, that kind of behavior pattern.

Mr. ANDERSON. Well, apparently there are more than you who are naive. Were you familiar with his reputation among ranking officials within the Carter administration?

Mr. CHISHOLM. Absolutely, impeccable.

Mr. ANDERSON. And was that reputation with respect to truthfulness, integrity, as well as political effectiveness?

Mr. CHISHOLM. As far as I saw, as far as I knew, the only concern that I had, as I have indicated, was his telephone habits.

Mr. ANDERSON. And apart from your own concern about his telephone habits, had you heard anything negative about William Borders prior to October 9, 1981?

Mr. CHISHOLM. No.

Mr. ANDERSON. And you had with Mr. Brown—I take it that is Benjamin Daniel Brown?

Mr. CHISHOLM. Yes.

Mr. ANDERSON [continuing]. You had dealt with other officials within the Carter administration?

Mr. CHISHOLM. Yes. Yes, I did.

Mr. ANDERSON. Well, let me shift a bit, Dr. Chisholm. Have you ever met Alcee Hastings?

Mr. CHISHOLM. The association that I had with Judge Hastings primarily initiated around 1975–1976. I was invited by Nova University in Fort Lauderdale, Florida, to assist them in developing a criminal justice educational program, and I brought to the table during that particular period a background of helping many, many colleges and universities around the country to initiate a program in criminal justice.

In a casual conversation with attorney Hemphill Pride in Columbia, South Carolina, I mentioned that I had accepted the invitation by Nova University to create a program in Fort Lauderdale, Florida, and Mr. Pride told me that he had a friend in Fort Lauderdale, Florida, who was a good person and why don't I call him when I get to Fort Lauderdale and seek his assistance, if I needed that.

It was not until about the second visit in Fort Lauderdale, at Nova, that I called then attorney Hastings. I did not have an opportunity to meet him face-to-face, but we did speak over the telephone and, sure enough, as Mr. Pride had indicated to me, he of-

fered whatever assistance that he could render to me while in Fort Lauderdale.

Beyond that particular point, during the Carter campaign, I had heard about the works of attorney Hastings in the Florida community and that Florida was one of the few States in the country that I did not have to spend an inordinate amount of time campaigning, because of the political influence of Judge Hastings and others in that State, so I never had an opportunity to meet him during the campaign.

In 1981, I believe, the National Association of Blacks in Criminal Justice had its annual conference in Atlanta, Georgia, and as the founder of that national association and chairman emeritus and a member of the Conference Planning Committee, I was asked by the leadership if I could extend an invitation to Judge Hastings to speak at that particular conference, and I did contact Judge Hastings and indicated to him that there was an interest on the part of the organization to have him speak, would he speak, he readily accepted that invitation and consummated his coming and he spoke at that conference, and that was the first time that actually I had an opportunity to meet him face-to-face physically.

Mr. ANDERSON. Now, do you recall whether the speech he gave was before or after Mr. Borders had been arrested or Judge Hastings had been charged?

Mr. CHISHOLM. Well, the information that was surfacing around Bill Borders was pretty much well known and was very controversial. In fact, from the standpoint of this national association, was of primary interest, because the issue of that centered around this particular affair, was the impact of the criminal justice system on blacks who work within that system, generally and specifically black Americans, so the invitation for the judge to speak primarily was to get a sense of what was happening from a judiciary standpoint in the case of Mr. Borders and certainly the allegations that had been set forth surrounding the judge.

Mr. ANDERSON. Did the judge, in the course of his remarks, the best you can recall, discuss his own case with Mr. Borders specifically?

Mr. CHISHOLM. The judge spoke from his own personal reference. I cannot recall—in fact, I cannot remember him mentioning Mr. Borders in his speech. Most of his concerns and comments were referencing himself.

Mr. ANDERSON. And was he outspoken about his view of the Federal criminal justice system?

Mr. CHISHOLM. Indeed, he was.

Mr. ANDERSON. I think I will leave that one rest right there.

You indicated that your first contact with Judge Hastings and Mr. Hastings had been suggested by Hemphill Pride. Did you know Mr. Pride?

Mr. CHISHOLM. Yes.

Mr. ANDERSON. How long had you known him?

Mr. CHISHOLM. I had heard of Mr. Pride prior to 1976. I had a lot of positive regards for Mr. Pride. He was known as an excellent trial attorney in South Carolina, that had an impeccable win record in the courts and had a lot of respect in the community of South Carolina. But it was not until the victory of President Carter

that I specifically created a personal relationship, and it was primarily through the fact that Mr. Pride wanted to have a banquet dinner in my honor, since the President had identified myself as the first U.S. Marshal to be appointed under his administration, and the fact that I was the first black U.S. Marshal appointed in the South since Reconstruction, and Mr. Pride was the one that chaired that particular banquet dinner.

Mr. ANDERSON. Now, was this before or after Mr. Pride's criminal problems began?

Mr. CHISHOLM. It was before. They were slowly kind of surfacing, but it was prior to his problems.

Mr. ANDERSON. Did you remain in contact with Mr. Pride after he was indicted?

Mr. CHISHOLM. Oh, yes. I mean, you don't——

Mr. ANDERSON. How was his relationship with you then?

Mr. CHISHOLM. Well, as U.S. Marshal during his trial, there were reactions by——

The CHAIRMAN. Counsel, let me just interrupt. I am not sure where all the testimony is leading. Obviously, the witness is responding to your questions. I am just not sure how all of this is relevant to the issues before us.

Mr. ANDERSON. Well, let me—in the first instance, I take it regarding the reputation with respect to Mr. Borders was held prior to October 9, as established by other people, is relevant to whether Judge Hastings should or should not have known of his other side. His eccentricities with respect to the telephone and the pay phone thing extending back into the 1970's in the Carter administration, it seems to me, deal with the question of materiality.

The CHAIRMAN. I understand that the question——

Mr. ANDERSON. Mr. Pride has been a witness here and, to the extent that he may or may not have had any motive, assessing him and the axis of his testimony, it does seem to me to become a factor of significant consequence here.

The CHAIRMAN. Well, we will permit you to continue, but I do think that some of the questioning seems to be a little far afield from the issues before us.

Mr. ANDERSON. Again, subsequent to Mr. Pride's indictment, can you pick up and tell us how your relationship changed with him, if it did?

Mr. CHISHOLM. Well, it didn't change from my perspective, but my being——

The VICE CHAIRMAN. Mr. Anderson, what does that have to do with this case? What does his relationship with Mr. Pride have to do with this case in any remote way?

Mr. ANDERSON. I take it Mr. Pride's credibility is an issue in this case and whether he had any motivation. You are dealing with a fairly tight community, and this person can bring information to bear, Senator.

The VICE CHAIRMAN. But that's not an appropriate way to develop that kind of issue.

Mr. ANDERSON. Senator, during the first half of——

The VICE CHAIRMAN. His credibility is not really to be determined by what this witness says.

Mr. ANDERSON. Mr. Chairman, we have dealt with the pattern of Hemphill Pride's desire to gain readmission to the bar, how that came about, whether he was bitter, who his friends were, who was not. I will only——

The VICE CHAIRMAN. It will take less time if you proceed, but just note my concern about this line of questioning.

Mr. ANDERSON. Mr. Chairman, just let me—it took ten and three-quarter days for the House to put in their case, I am in day four and I am damn near through. I don't think I have squandered my time and I have tried to be as efficient as I can. The rules, in terms of relevance and everything that might conceivably be of interest to any one of the Senators, it seems to me, would be the standard. I share your concern and in other circumstances I think you would be quite correct, but I would like at least some flexibility here to simply let this play out.

The VICE CHAIRMAN. Well, you are beyond my point of flexibility, Professor Anderson, and I'm not concerned about what you're damn near on anything.

The CHAIRMAN. Counsel, we will let the questioning go forward, but I do think the concern is a valid one that Senator Specter raises and I think the committee has been very patient in allowing all sorts of testimony in, and obviously we want to hear anything this witness can tell us that is relevant to the case.

Mr. ANDERSON. Subsequent to moving forward, you were aware, were you not, that Mr. Borders was tried in Atlanta and convicted?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. Subsequent to that time, did you have a conversation with Bill Borders, do you recall?

Mr. CHISHOLM. I had many conversations with Mr. Borders up through this period. Again, they were not regular conversations, but there were many conversations. I remember one conversation in particular that I had with him at a local restaurant here in Washington.

Mr. ANDERSON. Is that a conversation about which you testified in Atlanta?

Mr. CHISHOLM. Yes. Yes, it was.

Mr. ANDERSON. Would you share that conversation, to the best of your recollection, with the committee?

Mr. CHISHOLM. Well, I was having dinner with the Director of the DC Department of Corrections at a local restaurant and Mr. Borders walked in. Of course, recognizing me, he came over and we initiated a conversation.

The first thing I noticed was the fact that Mr. Borders appeared to be a worn-down man, I mean he really looked bad, but immediately he began to discuss his impressions of what was happening to him and, in particular, the friendship with Mr. Pride and the fact that he was disappointed that Mr. Pride had, in fact, given information or evidence that was impervious to his situation and that he was very bitter toward Mr. Pride from that particular standpoint.

Mr. ANDERSON. Did you continue to know Mr. Pride after he was released from prison?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. And were you aware of his reputation at that point?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. Can you tell this committee, from the time he was released from prison, was Mr. Pride seeking reinstatement as a lawyer?

Mr. CHISHOLM. Absolutely, he was very pervasive on that issue. He was not leaving many stones unturned, and obviously I could understand that, since that was his professional career.

Mr. ANDERSON. But that was, from both your dealings with him and your impression, that was his burning desire from that point on?

Mr. CHISHOLM. Yes, sir.

Mr. ANDERSON. I have no further questions, Mr. Chairman.

The CHAIRMAN. Is there cross-examination?

Mr. GEKAS. A few questions, Mr. Chairman.

Mr. Chisholm, I am George Gekas, a member of the House, of the managers team here.

Mr. CHISHOLM. Yes, sir.

CROSS-EXAMINATION

Mr. GEKAS. In 1981, you testified you, of course, knew Judge Hastings and you knew Bill Borders and you knew Hemphill Pride during that period, is that correct?

Mr. CHISHOLM. That's right.

Mr. GEKAS. You still know them.

Mr. CHISHOLM. Yes, sir.

Mr. GEKAS. And that particular time which is in question, you knew them all?

Mr. CHISHOLM. Yes.

Mr. GEKAS. And you knew that Judge Hastings was a good friend of Pride's——

Mr. CHISHOLM. Yes.

Mr. GEKAS [continuing]. And that Pride was a good friend of Borders——

Mr. CHISHOLM. That's correct.

Mr. GEKAS [continuing]. And that Borders with Hastings, is that correct?

Mr. CHISHOLM. Yes, that's correct.

Mr. GEKAS. I guess Hemphill Pride was as co-resident with you, he resided in the same area?

Mr. CHISHOLM. Yes, that's correct.

Mr. GEKAS. In 1981, this period, this interrelationship with friends here, did either Bill Borders or Judge Hastings ever ask you to contribute anything or to help Hemphill Pride in any way?

Mr. CHISHOLM. No, sir.

Mr. GEKAS. I have no further questions.

The CHAIRMAN. Is there any redirect examination?

Mr. ANDERSON. No, Mr. Chairman.

The CHAIRMAN. Dr. Chisholm, let me ask a couple of questions here. You indicated that in your conversations with Bill Borders, he explained to you that when you called him on the phone, he would not want to go ahead and have a conversation with you at

that time, he would want to take your number down and then go to a public phone and call you back, is that correct?

Mr. CHISHOLM. That's correct.

The CHAIRMAN. And your understanding, again, as to why he wanted to do that, would you just go through that once more?

Mr. CHISHOLM. Well, I inferred from his conversations that, one, he was afraid that someone perhaps may pick up and listen to his conversation in the office; second, that potentially his phone was tapped and he wanted to avoid either of those situations, and the only thing, as I indicated, that surprised me was the fact that I had never given any reason to Mr. Borders to be concerned about the nature of my conversations with him, because they were all aboveboard, but he felt that it was best, as he attempted to educate me, to keep in mind that these kinds of situations exist and that it would be always best to keep in mind that these things could happen.

The CHAIRMAN. Did he suggest to you who he thought might be trying to listen to his phone calls or tap his phone? Was he concerned about law enforcement, or was he concerned about someone else?

Mr. CHISHOLM. Mr. Chairman, I think you have to keep in mind my position. From the political standpoint, I was committed and dedicated to protect the integrity of the President of this country, and would still do that, and my impression was that he was doing this to protect the political side of our activities. That is the way the conversations were initiated, and I sustained that kind of perspective throughout our relationship, and that is why I observed a moment ago that I now question an activity of my own judgement, as a criminologist, with this whole kind of process.

The CHAIRMAN. But your impression at that time, after talking to him, was that his main concern was not that he and you might discuss something of an illegal nature which he would want to keep law enforcement from hearing, but, rather, that you would discuss sensitive political matters that he thought perhaps political enemies would want to listen in on, is that correct?

Mr. CHISHOLM. That is totally and absolutely correct.

The CHAIRMAN. Did he ever suggest to you that you should pursue a course similar to that as well, that, in addition to him going to a pay phone, perhaps there was a problem with you sitting in your office talking to him? Did he ever suggest that to you?

Mr. CHISHOLM. Yes, sir.

The CHAIRMAN. Did you ever do that?

Mr. CHISHOLM. No, I never say anything over the telephone that I won't say publicly, so I just——

The CHAIRMAN. It never occurred to you to leave your office——

Mr. CHISHOLM. No, sir.

The CHAIRMAN [continuing]. And use a pay phone to communicate with him?

Mr. CHISHOLM. No, sir, never have, not even at home, and my wife is here.

The CHAIRMAN. Especially not at home?

Mr. CHISHOLM. Absolutely. [Laughter.]

The CHAIRMAN. Senator Specter, did you have some questions?

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Mr. Chisholm, you testified that you had this one conversation with Mr. Borders after the trial where he complained about Mr. Pride.

Mr. CHISHOLM. Yes, sir.

The VICE CHAIRMAN. Did he make any complaint to you about the way he was treated in the criminal process, in the criminal trial which convicted him?

Mr. CHISHOLM. Not specifically, Senator. I think his overall conversation was very generic, even though he specifically zoomed in on Mr. Pride.

The VICE CHAIRMAN. Did he make any complaint to you that Judge Hastings treated him unfairly?

Mr. CHISHOLM. No, sir, he never brought the judge's name up.

The VICE CHAIRMAN. Thank you very much.

Mr. CHISHOLM. Yes, sir.

The CHAIRMAN. Are there other questions from any committee member?

[No response.]

Is there any reason that this witness cannot be excused?

[No response.]

Dr. Chisholm, we appreciate very much your testimony and you are excused.

Mr. CHISHOLM. Thank you.

The CHAIRMAN. Would counsel for Respondent please call his next witness.

Mr. ANDERSON. Respondent calls Martin R. Raskin.

The CHAIRMAN. Would you raise your right hand, please?

Do you, Martin Raskin, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Alcee L. Hastings shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. RASKIN. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF MARTIN R. RASKIN

DIRECT EXAMINATION

Mr. ANDERSON. Good afternoon, Mr. Raskin.

Mr. RASKIN. Good afternoon.

Mr. ANDERSON. Would you tell the committee, give them your full name?

Mr. RASKIN. Martin R. Raskin.

Mr. ANDERSON. And what is your professional role right now?

Mr. RASKIN. I'm an attorney in practice in Miami, Florida.

Mr. ANDERSON. And do you have an area of specialty?

Mr. RASKIN. I practice primarily Federal criminal law.

Mr. ANDERSON. And prior to 1982, could you describe briefly your experience from the time you graduate from law school until then?

Mr. RASKIN. My first job after law school in 1974 was as a law clerk to Chief Judge Lawrence A. Whipple, U.S. District Court for New Jersey. I then became an Assistant United States Attorney for the District of New Jersey, from 1975 through 1978. From 1978 to 1980, I was a special attorney with the Organized Crime and Racketeering Section of the Department of Justice, with the Miami

Strike Force, and from 1980 through 1982, I was Chief of the Criminal Division of the U.S. Attorneys Office for the Southern District of Florida. Since 1982, I have been in private practice.

Mr. ANDERSON. Now, in the period of 1980 to 1982, who was the United States Attorney?

Mr. RASKIN. Atlee Wampler.

Mr. ANDERSON. And from 1970 to 1980, who would have been the head of the Miami Strike Force?

Mr. RASKIN. Atlee Wampler.

Mr. ANDERSON. Now, as a prosecutor, did you have occasion to try cases before United States District Judge Alcee Hastings?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. Does one of those cases stand out in your mind?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. Could you tell the committee what the case was and tell them a bit about what was involved in it?

Mr. RASKIN. Yes, it was entitled *United States* v. *Matthew Mochetta, et al.*, and it was a case involving the proposed sale of 50,000 machine guns, silencers, assassination kits to South American revolutionaries.

Mr. ANDERSON. And what were the defendants raising by way of defenses?

Mr. RASKIN. There were a number, but a main defense in the case was that the defendants were in actuality working for the CIA and, as in Mission Impossible, the CIA had disavowed any responsibility for their actions and that was the thrust of the defense.

Mr. ANDERSON. As a result of that issue being defined, was the Government required to submit to Judge Hastings sensitive information for his review and determination as to whether it should be disclosed to the defendants?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. What was the ultimate outcome of that case?

Mr. RASKIN. All of the defendants were convicted.

Mr. ANDERSON. Was that a jury trial or a bench trial?

Mr. RASKIN. It was a jury trial.

Mr. ANDERSON. And do you recall who the defense counsel were? Let me ask you, was one of them Neal Sonnett?

Mr. RASKIN. One of them was Neal Sonnett. There were others.

Mr. ANDERSON. Now, in your capacity, both as a prosecuting attorney with the Strike Force and later as the Chief of the Criminal Division of the U.S. Attorneys office, did you become familiar with Judge Hastings' reputation among assistants who were actually trying cases before him?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. And as a member of the defense bar, have you become familiar with his reputation among attorneys in private practice?

Mr. RASKIN. Yes.

Mr. ANDERSON. And do you remain a member of the, I think it is the Former Assistant United States Attorneys Association of Miami?

Mr. RASKIN. I'm the Vice President.

Mr. ANDERSON. And are you generally familiar with his reputation among the assistants today, among Assistant United States Attorneys?

Mr. RASKIN. Yes, I am.

Mr. ANDERSON. Based upon your own experiences before Judge Hastings, do you have an opinion as to his ability as a trial judge?

Mr. RASKIN. I think he is an exceptional trial judge.

Mr. ANDERSON. And I take it you have appeared before a number of Federal judges around the country?

Mr. RASKIN. Yes, I have.

Mr. ANDERSON. Do you have an opinion as to his integrity?

Mr. RASKIN. Yes, I do.

Mr. ANDERSON. What is that opinion, sir?

Mr. RASKIN. I think he's a man of great integrity.

Mr. ANDERSON. You have tried a case before him involving sensitive government information. Do you have an opinion about his ability to handle sensitive information in respect to the interests of the Government?

Mr. RASKIN. I think he handles sensitive information appropriately.

Mr. ANDERSON. Among trial lawyers among either the government or the private sector who have appeared before him, are you familiar with his reputation as a Federal trial judge?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. What is that reputation?

Mr. RASKIN. It's good.

Mr. ANDERSON. And his reputation for integrity, are you familiar with that?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. And what is that reputation?

Mr. RASKIN. His reputation is high.

Mr. ANDERSON. Mr. Raskin, in your role as Chief of the Criminal Division, you were Chief of the Criminal Division in the United States Attorneys office in 1981, were you, sir?

Mr. RASKIN. Yes, I was.

Mr. ANDERSON. Did you have any discussions, either with Mr. Wampler or with others, concerning decisions in the investigation that ultimately led to the prosecution of Judge Hastings?

Mr. RASKIN. Yes, I did.

Mr. ANDERSON. Particularly, did you have discussions immediately preceding the day on which Mr. Borders was arrested concerning how that matter should be handled?

Mr. RASKIN. I believe it was the night before the arrest of Mr. Borders, Mr. Wampler and I had a conversation telephonically with Jerry McDowell in the Public Integrity Section.

Mr. ANDERSON. And could you recount to the committee what the content of that conversation was and what the position of the various participants were?

Mr. RASKIN. Yes. I'm quite frankly not sure how I came to be involved in that conversation, because I basically recused myself from taking part in this investigation, because I did know Judge Hastings and, once the case was referred to the Public Integrity Section, I made it my business to not be involved in the day-to-day investigatory matters.

The night before the arrest of Mr. Borders, I came into Mr. Wampler's office and Mr. McDowell was on the speaker phone and was recounting to us the Public Integrity Section's or the FBI's—and I'm not really sure which—plan to arrest Mr. Borders the following day and to flip him or turn him as a witness against Judge Hastings.

Mr. ANDERSON. And what was your response and Mr. Wampler's response to that report?

Mr. RASKIN. I thought that that was a terrible idea. Mr. Wampler and I strongly suggested to the Public Integrity Section that they not proceed in that fashion, that they allow the money to go its course and follow the money. We suggested putting a Title III wiretap in Mr. Borders' office, in Mr. Borders' car, we felt that would be a more appropriate way to proceed, and our thought was that that way you would either know that Judge Hastings was guilty or you would know that Judge Hastings was innocent, but one way or the other, there was a better chance that the issue would be clarified.

We also were concerned that the FBI would not be able to flip Mr. Borders, based upon what we knew of Mr. Borders. He was a prominent attorney, he was the President of the National Bar Association, he was an old friend of Judge Hastings, and our thought was that there's no way that this gentleman was going to turn as a Government witness, he had everything to lose and nothing to gain by doing that at that time. So, we took the position that an arrest shouldn't take place at that time.

Mr. ANDERSON. And what was Mr. McDowell's response?

Mr. RASKIN. He responded that the FBI was committed to not allowing the money to walk and that they were convinced that they could flip Mr. Borders and they told us that the decision had been made and that's the way they would proceed.

Mr. ANDERSON. As an experienced prosecutor, experienced in criminal investigations, did you consider that a reasonable decision?

Mr. RASKIN. No.

Mr. ANDERSON. Why not?

Mr. RASKIN. As I explained a little while ago, I didn't think that Mr. Borders would flip and I thought that the Government would be left in the position where they simply would not know whether or not Judge Hastings was guilty or innocent, and it was a better chance of conclusively determining guilt or innocence by following the money and seeing if any subsequent telephone conversations or bank records could shed some light on the transaction.

Mr. ANDERSON. And given your experience, does the fact that $125,000 was involved, does that alter your view?

Mr. RASKIN. Not really. It is a lot of money and, you know, nobody likes to see $125,000 lost, but we are talking about a Federal judge here and, if indeed there was a corrupt Federal judge, it is a small price to pay to find that out.

Mr. ANDERSON. And given all that you know, the opinions that you have expressed about the judge, his ability to handle confidential information, his integrity, do they remain the same as of July 31, 1989, sir?

Mr. RASKIN. Yes, they do.

Mr. ANDERSON. And the account you've given of his reputation, is that the reputation among experienced attorneys as you know it circa July 31, 1989?

Mr. RASKIN. Yes, it is.

Mr. ANDERSON. Mr. Chairman, just briefly, if I might show a brief biographical sketch.

Mr. SYNAR. No objection, Mr. Chairman.

The CHAIRMAN. Do you wish to introduce that into evidence?

Mr. ANDERSON. Mr. Raskin, did you supply me with that?

Mr. RASKIN. Yes, I did.

Mr. ANDERSON. Mr. Chairman, I would move the admission—and we have copies—of Respondent's No. 155 for identification.

The CHAIRMAN. Without objection, it is admitted.

[The document referred to was marked Respondent's Exhibit 155 and was received in evidence.]

Mr. ANDERSON. I have no further questions.

The CHAIRMAN. Cross?

CROSS-EXAMINATION

Mr. SYNAR. Mr. Raskin, I am Congressman Mike Synar, from Oklahoma. I am part of the managers or the House team in Washington. I have just a few questions.

Now, with respect to your belief that the Government should have let the money run on October 9, 1981, at that time you were not directly involved in the investigation of the bribery case involving Judge Hastings or Mr. Borders, is that true?

Mr. RASKIN. That's correct, sir.

Mr. SYNAR. And very early on the case, you were transferred to the Public Integrity Section, is that not correct?

Mr. RASKIN. The case was transferred to the Public Integrity Section.

Mr. SYNAR. Right, so you weren't involved?

Mr. RASKIN. That's correct.

Mr. SYNAR. All right. For example, you did not take part in the planning of the investigation or the gathering of evidence or the review of that evidence, is that correct?

Mr. RASKIN. Yes, sir.

Mr. SYNAR. Now, you testified that you did not think that the decision that was made a reasonable decision with respect to letting it play out, but at the time of your conversation with Jerry McDowell, for example, you had not heard the tapes of Mr. Borders' meetings with Mr. Rico, nor did you know the results of the wiretap on Mr. Borders' office or home, is that correct?

Mr. RASKIN. I was generally aware of those tapes. I do not recall whether I heard them or not.

Mr. SYNAR. But you don't remember if you heard them or not.

Mr. RASKIN. No, I don't.

Mr. SYNAR. All right. Finally, Mr. Raskin, wouldn't you agree that if a judge, any judge was found to conspire to obtain a bribe from defendants who were appearing before him, that that would be ample reason to remove a judge from public office?

Mr. RASKIN. Yes, I agree with that.

Mr. SYNAR. And would you not also agree, Mr. Raskin, that if a judge, any judge was found to have lied to the witness on the witness stand, after taking the oath to tell the truth, that he or she should be removed from the bench?

Mr. RASKIN. I agree with that as well, sir.

Mr. SYNAR. Thank you, Mr. Chairman.

The CHAIRMAN. Redirect?

REDIRECT EXAMINATION

Mr. ANDERSON. Oh, sure.

Mr. Raskin, you remained in Miami while the evidence and charges were playing out in the Miami Herald and in the courtroom against Judge Hastings?

Mr. RASKIN. Yes, sir.

Mr. ANDERSON. And did you follow that with some interest?

Mr. RASKIN. Yes.

Mr. ANDERSON. When the jury came back with its verdict of not guilty, were you content?

Mr. RASKIN. Yes, I was.

Mr. ANDERSON. And you still are comfortable practicing before United States District Judge Alcee Hastings?

Mr. RASKIN. Yes, I am.

Mr. ANDERSON. No further questions.

The CHAIRMAN. Are there any additional questions?

Mr. SYNAR. No, Mr. Chairman.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Mr. Raskin, I am just curious as to how the occasion arose for you to be giving your advice on the handling of this case the night before the arrest. You are talking about the 8th of October now——

Mr. RASKIN. I believe that's the date.

The CHAIRMAN. This is a case that you not only were not involved in, but you had purposely been kept out of or purposely decided to stay out of.

Mr. RASKIN. That's correct.

The CHAIRMAN. And how did it happen that, after having decided to stay out of the case and not be involved, you became involved in the last few hours of this thing and gave your strong opinion on the subject?

Mr. RASKIN. I have tried to search my recollection on that point and I'm not sure. What I assume is that, as was my custom most nights—and it was this night, at about 6:30 in the evening—I would go down and I was the Chief of the Criminal Division, I had about 50 or 60 attorneys who reported to me at that time, I would discuss with the U.S. Attorney the affairs of the day, who was in trial, what particular problems were involved with the handling of criminal cases, I assume I was just there when the telephone call took place and I assume that Mr. Wampler simply put me on the speaker phone during the course of that conversation.

The CHAIRMAN. What was Mr. Wampler's involvement again?

Mr. RASKIN. He was the U.S. Attorney for the Southern District of Florida.

The CHAIRMAN. What was his involvement in this case? I gather he and you disagreed strongly with Mr. McDowell——

Mr. RASKIN. That's correct.

The CHAIRMAN [continuing]. And Mr. McDowell was head of the Public Integrity Section. Now, what was Wampler's connection to the case?

Mr. RASKIN. I'm not sure, but I know he had a great deal more involvement with the case than I did. He was much more intimately involved with the details of the case than I was. He, for example, knew about and perhaps even helped prepare some of the Title III wiretap applications that were used in the case. I think that Mr. Weingarten and the others' involvement in the case consulted with him regularly concerning the status of the investigation.

The CHAIRMAN. Now, Mr. Wampler was the U.S. Attorney?

Mr. RASKIN. Yes, sir.

The CHAIRMAN. And Mr. McDowell was head of the Public Integrity Section of the Department of Justice?

Mr. RASKIN. Yes, that's right.

The CHAIRMAN. So, McDowell didn't in any way answer to Wampler?

Mr. RASKIN. That's correct.

The CHAIRMAN. McDowell, if anything, was his superior?

Mr. RASKIN. I'm not sure how that works, but——

The CHAIRMAN. He really wasn't in the line of command, one way or another, he had his own set of attorneys who pursued their own cases, and this case had been shifted over to the Public Integrity Section some significant time before, had it not?

Mr. RASKIN. Yes, Senator.

The CHAIRMAN. I still have trouble understanding why Mr. Wampler and yourself would have occasion to give your strong advice on this matter in the last quarter, in the last few minutes.

Mr. RASKIN. I am speculating, because I'm not sure that Mr. Wampler would have known that the arrest was going to take place the next day. I'm speculating that Mr. McDowell called Mr. Wampler to inform him of that fact, but that is speculation.

The CHAIRMAN. Senator Specter.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Mr. Raskin, I understand how prosecuting attorneys talk about themselves, but did you consider it a little bit unusual where it was such a highly secret matter in terms of what the FBI was going to be doing to try to carry out the arrest of Mr. Borders, get him to talk about Judge Hastings or make that effort, to have this kind of a conversation where a speaker phone was used and voices carried to some substantial extent in that manner?

Mr. RASKIN. Did I think it was unusual? No, sir.

The VICE CHAIRMAN. Who all was present, if anyone, besides you and Mr. Wampler, in the room at the time?

Mr. RASKIN. I don't believe anyone else was present. I believe it was just Mr. Wampler and myself.

The VICE CHAIRMAN. You've identified Mr. Wampler both as the U.S. Attorney and also as head of the Strike Force, those two positions were combined, were they, at that time?

Mr. RASKIN. No, they weren't. He was the head of the Strike Force at the time that the then U.S. Attorney Jack Eskinazi passed

away, Mr. Wampler was then appointed to become U.S. Attorney from his position in the Strike Force.

The VICE CHAIRMAN. And Mr. McDowell was put on the speaker phone, with his knowledge, and spoke on the speaker phone about these confidential matters?

Mr. RASKIN. I assume he knew it was a speaker phone, he was speaking to both of us.

The VICE CHAIRMAN. Well, was he on the speaker phone before you came into the room?

Mr. RASKIN. I don't recall, sir.

The VICE CHAIRMAN. Mr. Raskin, you've testified that you consider it unreasonable for Mr. McDowell to insist on proceeding with the arrangement where the arrest was made without letting the money leave the possession of the FBI?

Mr. RASKIN. I'm not sure unreasonable is the right word or the word I would have chosen. My testimony is that it was an improper, not the best method, not the best investigatory method.

The VICE CHAIRMAN. Well, to boil it down, lawyers may disagree, even experienced prosecutors may disagree. Do you think that the judgment that Mr. McDowell applied was beyond the realm of reasonable judgment by a prosecutor under those circumstances, or an investigator under those circumstances?

Mr. RASKIN. No, I could see the other side. I just thought it was wrong.

The VICE CHAIRMAN. So, you disagreed but you didn't think it was beyond the realm of an appropriate exercise of discretion?

Mr. RASKIN. I simply thought it was wrong.

The VICE CHAIRMAN. In expressing your opinion, what consideration had you given to the opportunity for Mr. Borders to have laundered the money, that is, to have taken it and have it exchanged so that had any of it reached a third party such as Judge Hastings, there would have been no opportunity to trace the money?

Mr. RASKIN. I gave that some thought and I am not convinced that letting the money would have worked. I just think it would have been the better and more proper course of affairs. And whether the money was laundered or not, if within a few weeks or a week or a few days Judge Hastings put a large amount of money in his bank account, I think it would have been probative.

The VICE CHAIRMAN. Do you know how much money the FBI was allocated by Senator Rudman's subcommittee for this kind of a purpose in 1981, the first year—I was on the subcommittee that year, too——

Mr. RASKIN. No, Senator.

The VICE CHAIRMAN [continuing]. The first year of the budget constraints under President Reagan?

Mr. RASKIN. No, sir.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. Let me just say apropos Senator Specter's comment, Mr. Raskin, I wish they had followed your advice, we would not have been here today and Judge Hastings would have made things a lot easier, it is very clear. You were right, $125,000, we spill that much, I'm sorry to say.

I just want to get the record clear here, because the last couple of questions I think people are going to watch this. We had a man named Martinas who testified here a few days ago, he worked for the U.S. Attorney in Miami.

Mr. RASKIN. Yes, sir.

Senator RUDMAN. He did not work for the Public Integrity Section.

Mr. RASKIN. That's correct.

Senator RUDMAN. And much of the work that was done preliminarily was done, as it always is for the Public Integrity Section, by the local U.S. Attorney.

Mr. RASKIN. That's correct.

Senator RUDMAN. And it is perfectly normal for the head of the Public Integrity Section to inform the sitting U.S. Attorney, who was an appointee of the President of the United States, as to what is going on in his district.

Mr. RASKIN. I think it would have been unusual had that not happened.

Senator RUDMAN. In fact, in almost every case you can probably think of, before a major case goes down involving a U.S. Attorney's office by the Public Integrity Section, they will notify them.

Mr. RASKIN. That's correct.

Senator RUDMAN. I assume they assume they could trust the U.S. Attorney and his assistants.

Mr. RASKIN. Yes.

Senator RUDMAN. That's a fair assumption.

Mr. RASKIN. Yes.

Senator RUDMAN. Thank you, Mr. Raskin.

Senator BRYAN. Mr. Chairman, I have a question.

The CHAIRMAN. Senator Bryan?

Senator BRYAN. Mr. Raskin, I was curious, I thought I understood you to say that earlier on you made a determination to excuse yourself from the case.

Mr. RASKIN. Informally, yes.

Senator BRYAN. Can you tell us why you made that decision and at what stage of these proceedings you were brought into a situation in which you had to make that personal judgment?

Mr. RASKIN. I was involved when the initial information came in concerning the allegations, I was part of the——

Senator BRYAN. This would have been, again, earlier in 1981?

Mr. RASKIN. Whenever the allegations came in. My recollection is not clear. The investigation began, I was involved in the initial stages of the investigation. There came a time that I felt that, practicing on a fairly regular basis in front of Judge Hastings and having affection for the man, that I was not the proper person to be intimately involved in this investigation.

Mr. Wampler, of the Public Integrity Section, was brought in and, for the most part, I stayed out of this investigation. There was nothing official, it wasn't like I would never speak to the U.S. Attorney concerning the investigation, but I made it known that I really didn't think it was appropriate that I make any decisions concerning Judge Hastings and the investigation concerning Judge Hastings.

Senator BRYAN. May I take it, then, that it was because of your personal feelings for the judge or sense that he was, as you have testified, an outstanding trial judge, or was there a personal relationship that you had developed—and I am not suggesting, again, anything improper, Mr. Raskin, but as lawyers we frequently practice before a court, have associations with other members of the court, I just find that a little unusual that you would choose to recuse yourself. You strike me as a person of unimpeachable integrity and a record that is impressive and is the envy of every one of us here at this table.

Mr. RASKIN. Quite frankly, I felt that, while Judge Hastings and I are personal friends, we have never gone to dinner, we've never gone out to have a few drinks, I have become friendly with him, I've tried cases in front of him, I've appeared before him on dozens of occasions, and my feelings. I felt my personal feelings might get in the way of me doing my job as a criminal investigator.

Senator BRYAN. Was there anything about the handling of this investigation prior to the evening of October 8, which you've testified to, that in any way suggested to you that the handling of this investigation was not prudent, that shortcuts were being taken, that things were occurring that you felt, from a professional point of view and an experienced prosecutor, that were not in the best interests of putting together a good case, whether that case exonerated the judge or fully inculpated him in this conspiracy?

Mr. RASKIN. No, I felt the investigation was proceeding properly up to that point.

Senator BRYAN. OK. How many trials had you had before the judge?

Mr. RASKIN. I'm not sure, one, two, three, I just don't really remember.

Senator BRYAN. And was this basis of your high professional regard for the judge, was it based upon your term in the U.S. Attorneys Office, or had you had any experience with him when he had been a State judge?

Mr. RASKIN. No, I didn't know him when he was a State judge. I first began appearing before him when he was a United States District Court judge, when he became a District Court judge, and many of the cases that I handled didn't go to trial. So, when you asked how many trials I had before him, it would be a couple, but how many cases I've handled before him, it would be quite a few more. I appeared before him quite regularly.

Senator BRYAN. Thank you very much, Mr. Raskin.

The CHAIRMAN. Senator Pryor, did you have some questions?

Senator PRYOR. Yes, Mr. Chairman.

I don't quite know how to ask it, but I will in a moment. I want to ask one first. When Mr. Borders was arrested, Mr. Raskin, where were you that day?

Mr. RASKIN. I don't remember, sir.

Senator PRYOR. All right. Do you recall, because you were kind of in the umbrella of the governmental family and you were in the family of the U.S. Government, now do you recall during that day or that evening any word from your friends or buddies or associates, your peers, fellow professionals, were you hearing that Judge Hastings had fled or anything of this nature?

Mr. RASKIN. I don't think I heard it that day, but I subsequently heard that that happened.

Senator PRYOR. You knew that they were looking for Judge Hastings?

Mr. RASKIN. I don't recall whether or not I knew it then.

Senator PRYOR. OK. Now, here's my hard question, and I want to be very careful how I ask it, because I know I'm calling for some very subjective analysis here. But here you are in the governmental family once again, ultimately, in 1983, the U.S. Federal Judge Alcee Hastings is acquitted. After that time or right after that acquittal, Judge Hastings goes back to the bench and during the emotional time was there a mentality that you could ascertain of, let's say the government, maybe the FBI, maybe the U.S. Attorney, whoever, that "we're going to get this guy eventually," did you sense this?

Mr. RASKIN. No, I didn't sense that.

Senator PRYOR. Were they relieved that justice had been done and it was over? I know that is a tough question and I don't think the managers like me to ask questions like this, because I can see them wincing over there a little bit.

Mr. RASKIN. Is your question, sir, do I believe that the FBI was satisfied with the result?

Senator PRYOR. I think I know that answer. [Laughter.]

I think I am trying to get to the degree of dissatisfactory, how did they receive this. You have already answered this. You said you did not hear that they were going after him, to get him at some later time.

Mr. RASKIN. No, I didn't hear that.

Senator PRYOR. Mr. Chairman, that's all. Thank you.

The CHAIRMAN. Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman.

Mr. Raskin, you made a comment earlier about that conversation on the evening before Mr. Borders was arrested and I want to pursue it a little bit, because it may be of help, at least to this member of this committee, in trying to understand what happened here as we piece together this story that leaves a lot of questionmarks.

You said that you argued against arresting Mr. Borders and in favor of following the money, and part of your reason for that is that you believed that the FBI and the Federal Government would not be able to flip Mr. Borders, so to speak, have him turn against and testify against Judge Hastings, because he had, I believe—I'm paraphrasing you here—he, Mr. Borders, had everything to lose from cooperating.

Mr. RASKIN. That was my thought, sir.

Senator LIEBERMAN. Tell me what you meant by that. What did he have to lose?

Mr. RASKIN. He's a practicing lawyer. Unless he was going to be offered total immunity, which I knew wouldn't happen, at best he would lose his license to practice law; at worst, he would go to jail. He was a long-standing friend of Judge Hastings, I didn't think he would make that hard decision, he's a lawyer himself, without the benefit of legal counsel——

Senator LIEBERMAN. Right.

Mr. RASKIN [continuing]. And I just didn't think that this man was going to flip.

Senator LIEBERMAN. So, the choice would be that he would run the risk of going to trial and seeing how it worked out?

Mr. RASKIN. Yes, sir, that was my thought.

Senator LIEBERMAN. Right. OK. Obviously, you had some information about this case before October 9th, the day of the arrest. I presume you've followed it in the papers over the years since then, is that correct?

Mr. RASKIN. Yes, somewhat.

Senator LIEBERMAN. Have you done any more than that? Have you ever read any of the transcripts of the cases?

Mr. RASKIN. None at all.

Senator LIEBERMAN. OK. But you did reach a judgment today that—you said a couple of things, and I just want to draw it to a conclusion, if I can—one is that, in your opinion, Judge Hastings is a man of integrity and that you felt that you were satisfied—I believe I have the word correct, it may be somewhat off, but that was the tone of it—when you heard the news of the acquittal of Judge Hastings before the court.

Do I take it from that that you personally, as an attorney experienced in these matters, understanding that you didn't sit on a jury, you didn't sit up here hearing this whole case, you personally believe that Judge Hastings was not involved with Mr. Borders in this conspiracy?

Mr. RASKIN. Senator, I don't know. What I'm saying is we'll never know, and part of the reason we'll never know is as a result of what the government failed to do on the day of the arrest and, quite frankly, that wasn't Judge Hastings' fault. What I am saying is that had we followed the money, we still may have never known, but we would have certainly had the chance to know conclusively whether Judge Hastings was guilty or not guilty. I'm a criminal lawyer and I do place faith in a jury's verdict, and when that jury came back and said not guilty, I'm satisfied. Had the jury come back and said guilty, while I would have personally felt badly, I would have been satisfied as well.

Senator LIEBERMAN. OK. I think I understand your answer, then, a little bit more clearly, and that is, respecting the jury system as you do, accepting the wisdom of that judgment and then setting that along side your own personal dealings and knowledge of Judge Hastings is why you say today that you believe he's a man of integrity.

Mr. RASKIN. Yes, I do.

Senator LIEBERMAN. OK. Thank you.

The CHAIRMAN. Are there other questions? Senator Gorton?

Senator GORTON. Mr. Raskin, with respect to Senator Pryor's question, by the time Judge Hastings came to trial, you were no longer an Assistant United States Attorney, you were in private practice by that time, were you not?

Mr. RASKIN. I forget when the trial was.

Senator GORTON. The trial was in 1983 and your file says 1982.

Mr. RASKIN. I was in private practice.

Senator GORTON. Thank you.

The CHAIRMAN. Are there any other questions from members of the committee?

[No response.]

Is there any reason this witness cannot be excused?

[No response.]

Mr. Raskin, you are excused. We very much appreciate your testimony.

Mr. RASKIN. Thank you.

The CHAIRMAN. Counsel for Respondent can call his next witness.

Mr. ANDERSON. Mr. Chairman, at this time I would like to introduce some of the prior testimony that the committee has approved. With the committee's approval, I will follow the pattern established by the House and make a brief proffer as to why the testimony in my view, where it bears, and then I will pause in case the managers wish to take the same opportunity the Chair accorded me.

Rather than passing it up, we have copies, with the exception of the two who were recently approved, in a box which I will give to the staff at the—Mr. Chairman, we would proffer first the testimony of Benjamin Daniel Brown. Mr. Brown has been identified by Mr. Chisholm as the person who put him in touch with Mr. Borders. He was Deputy Chairman of the Carter Reelection Campaign and served on, I believe, the Democratic National Committee. He did testify at Mr. Borders' trial. His evidence is relevant here, as it was there, to establish Mr. Borders' reputation prior to October 9, 1981, and we offer it for that purpose.

Mr. BARON. Mr. Chairman, may I interrupt for one moment?

The CHAIRMAN. Yes.

Mr. BARON. We have not received summaries or proposed summaries of the testimony that is now being offered as prior testimony. It makes it very difficult for us to respond to material that we are hearing for the first time, as to whether we think it is a fair summation or not. I think, in fairness, we ought to get the summary that is supposed to be offered so we have a chance to take a look at it.

The CHAIRMAN. Mr. Anderson, let me ask, are you proposing here to put in the record a summary, or are you proposing to put the prior testimony in?

Mr. ANDERSON. As did the House, to put the prior testimony. I am simply offering this for those who have to read the transcript or see the tape, will know for what reason it was offered.

The CHAIRMAN. Now, the summaries have not been provided to the House managers?

Mr. ANDERSON. Mr. Chairman, the summaries are coming off my notes in my head. I don't have a typist. I don't have the support staff to do this. When my daughter got finished working on my outline for tomorrow at 9:00 last night, I sent her home. I don't have a summary.

The CHAIRMAN. Are you asking us to put something in evidence that we don't have copies of?

Mr. ANDERSON. Oh, no, you have copies of the prior testimony.

The CHAIRMAN. And that's all you are offering into evidence?

Mr. ANDERSON. These are the remarks of counsel which I am giving you to orient for what reason I——

The CHAIRMAN. You are making oral representation as to what is contained in the testimony, but the only thing being offered into testimony is the prior testimony itself, is that——

Mr. ANDERSON. That's quite correct.

The CHAIRMAN. Is that acceptable to the House?

Mr. BARON. We essentially did the same thing. We only did it with regard to one witness and I believe we provided our characterization, if you will, because that is what a summary always is. At the committee's request, we provided that to counsel for Respondent ahead of time, so that if he had any comment or thought it was unfair, wasn't a fair summary, because that is what you are hearing, he would have an opportunity to do so.

We certainly have no objection to the prior testimony going on. We know what the record is and we agreed that—we don't raise any objection to that. But to the extent that it is being characterized, we would ask for that characterization to be provided to us in advance, so that if we think it is not really fair or accurate, that we have a chance to comment.

The CHAIRMAN. I think it will serve the committee's best interests to go ahead, and if the prior testimony itself is permitted, to have a short explanation of why the prior testimony is being offered, if you find that the description of what the prior testimony accomplishes is objectionable, we will give you an opportunity to argue about that representation as to what the prior testimony does, either tomorrow or at some point before we close the record.

Mr. BARON. Thank you, Mr. Chairman.

The CHAIRMAN. Then I take it the testimony that has just been offered of Mr. Brown is acceptable, there is no objection?

Mr. BARON. No objection to the testimony coming in.

The CHAIRMAN. It will be admitted.

PRIOR TESTIMONY OF BENJAMIN DANIEL BROWN IN *UNITED STATES v. BORDERS*

THE CLERK: You do solemnly swear that the evidence you shall give in the cause now pending before this Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: State your full name.

THE WITNESS: My name is Benjamin Daniel Brown.

BENJAMIN DANIEL BROWN,

being first duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHORTER:

Q Where do you live, Mr. Brown?

A I live at 7932 Orchid Street, Northwest, Washington, D.C.

Q And how long have you lived in Washington, D.C.?

A I have lived there five years come March 29th.

Q And before then, where did you reside?

A 250 Matherson Place, Southwest, Atlanta, Georgia.

Q Are you a native of Atlanta, sir?

A Not of Atlanta, but a native of Georgia. I was born in Montezuma, Georgia, which is in south Georgia.

Q And were you raised in the State of Georgia?

A Yes.

Brown - Direct

Q Attend school here?

A Yes. I was raised in Georgia. I went to College Park Elementary School, South Fulton High School.

Q Are you a graduate of Clark College?

A Yes, sir, I'm a graduate of Clark, 1961.

Q And what degree did you take?

A Social Science degree, and AB degree in Social Science.

Q Following that, did you continue your education?

A Yes, I attended Howard University School of Law.

Q During what period?

A 1961-1964. I graduated in 1964.

Q And what is your present occupation?

A Present, I am Vice-President, Executive Vice-President, of Systems Research Company, which is headquartered in Philadelphia with an office in Washington, Atlanta and Dayton, Ohio.

Q What kind of work is that company engaged in?

A Systems Research Company is a computer science oriented company and we are basically in the information technology side of that. We do evaluations. We do systems design. We do strategic planning, economic development, urban planning and matters of that sort.

Q How long have you held your present position?

Brown - Direct

A One year this month.

Q All right. And before then, what kind of work were you engaged in, sir?

A Well, immediately prior to my going to Systems Research, I served as Deputy Chairman of the Carter Re-Election Committee in Washington, and prior to that, I was Deputy Chairman of the Democratic National Committee for two years.

Q Now, somewhere along the way, did you ever come in contact with or become acquainted with a person by the name of William A. Borders, Jr.?

A Yes.

Q And do you see Mr. Borders here in the courtroom?

A Yes.

(Continued without omission.)

Brown - Direct

BY MR. SHORTER:

Q All right. At what point did you first have any contact or association with Mr. Borders?

A I first met Bill Borders in 1962 at Howard University School of Law.

Q Were you students there together, sir?

A Yes, we were. He was one year behind me in law school.

Q So you finished ahead of Mr. Borders?

A That is correct.

Q All right. And over the ensuing years, did you have any further contact with Mr. Borders and, if so, kindly tell us what it was?

A Yes, I maintained my friendship with Mr. Borders for the entire 21-year period, 21 years this year. The last -- well, between 1975 and 1980, we had a very close association, after I had come back to Washington as a part of the Democratic party structure, having come to Washington with President Carter and Mr. Borders was very much involved in that process and a very important member of my team.

Q What was it that Mr. Borders did as a part of your team?

A Well, I recommended him to Bob Strouse and others who were in charge of our financial interests in the

Brown - Direct

party. He became a member of the Finance Committee, and a very productive member of that committee, working with people like Ellie Glen, who was treasurer, and Mr. Strouse, who was at that time Chairman of the re-election committee for the President, and many other people, Ken Curtis, the Chairman of the party at the time when I first went to the Democratic party, and Bill was very much a part of that network of people.

Q All right. Was Mr. Borders engaged in any fund raising?

A Oh, yes, very much so. Fund raising was one of his primary responsibilities. As you know, when you're developing a national team like that you need people with certain responsibilities to be -- to that supervise and to coordinate, and Bill was one of those persons who had a key responsibility in raising funds for the Democratic party. I would say under his leadership we raised nearly a million dollars over the four-year period.

Q And did Mr. Borders in the course of doing that handle the finances?

A Yes, he sure he did, because he was a person who reported it and was very much a part of that structure.

Q Now, over the past two years, could you tell us as to whether or not you were in contact with people in any

Brown - Direct

walk of life or in any community who were acquainted with Mr. Borders?

A Oh, yes. Mr. Borders has an enormous array of friends across this country whom he worked with in this Presidential effort, all of whom were very prominent and very much integral to the workings of the National Democratic Party. Yes, there were many people, coast to coast, that know him and know of his good reputation in working and supporting our efforts at the party.

Q And are these people, some of these people, known to you, sir?

A Oh, yes, most of them.

Q Now, among the people that you know who know Mr. Borders, what is his reputation for the specific traits of honesty, integrity, morality and probity?

A I don't think there was any question about Mr. Borders' integrity. Of course, people who support you and allow you to raise the kind of money he raised, if there was any question about his integrity, they would not have nominated him. It was all good and there were people from -- like I say, from coast to coast, from various states, who know Bill Borders and the job he did in handling money, receiving money, and handling it from Mayor Young in Detroit to Andrew Young in Atlanta, people like that.

Brown - Direct

Q All right. Now, based on your personal association with Mr. Borders, your personal dealings with him, and having a personal contact with him, are you in a position to have an opinion, or do you have an opinion, about Mr. Borders so far as these traits that I have mentioned to you are concerned, honesty, probity, integrity and morality?

A Oh, yes, I think Bill is a very honest person. He is my personal lawyer. He is my personal friend, and we have worked very closely together, as I have stated, in the last five to six years in a very important process which affected all of our lives. So it had to be based on a degree of honesty and trustworthiness which was understood fully and which is known by many people who know of his works.

MR. SHORTER: Thank you very much, sir.

(Continued without omission.)

Brown - Cross

CROSS-EXAMINATION

BY MR. RICHTER:

Q Mr. Brown, I gather from your testimony that you are someone who feels that Mr. Borders is extremely loyal to his friends? Is that correct?

A I have found him to be very loyal to his friends. I am certainly loyal to my friends, too.

Q Have you had an opportunity to hear the Government's evidence in this case, sir?

A Pardon me?

Q Have you had an opportunity to hear the Government's evidence as it was presented in this case?

A No. I haven't. I'm not familiar with the case at all.

Q So, you have not heard the tape-recordings that were played for the jury in this case?

A No, I have not.

MR. RICHTER: No further questions.

THE COURT: Redirect?

MR. SHORTER: Nothing further. Thank you very much, sir.

THE COURT: Thank you, Mr. Brown. You may step down, sir.

THE CLERK: Please step around to the witness

Mr. ANDERSON. Mr. Chairman, the second witness we would offer through prior testimony is the testimony of Herbert O. Reid, Sr. Mr. Reid was a professor at Howard Law School and served as legal counsel to the Mayor of Washington, he has served as Dean of the Law School. He knew Mr. Borders from his days as a student at Howard University and through their mutual endeavors at the National Bar Association.

He again testified and offered his opinion concerning the reputation of Mr. Borders for probity, integrity, honesty and morality that he enjoyed as of October 9, 1981. He testified at the 1982 trial of William Borders, and I offer his prior testimony here, bearing on the same point as the testimony you have heard.

The CHAIRMAN. I believe that the committees Order No. 8 already granted permission for that prior testimony to come into evidence.

Mr. BARON. No objection.

PRIOR TESTIMONY OF HERBERT O. REID, SR. IN *UNITED STATES v. BORDERS*

1 Reid - Direct

2 THE CLERK: You do solemnly swear that the

3 evidence you shall give in the cause now pending before

4 this Court shall be the truth, the whole truth, and

5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: State your full name.

8 THE WITNESS: Herbert O. Reid, R-e-i-d, Sr.

9 HERBERT O. REID, SR.,

10 being first duly sworn, by the clerk, was examined and

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHORTER:

14 Q Where do you live, Mr. Reid?

15 A 901 Sixth Street, Southwest, Washington, D.C.

16 Q How long have you lived in Washington?

17 A I guess about, off and on, about 40 years.

18 Q And before then, where did you live?

19 A Wilson, North Carolina, my home and then different

20 places at school and some of that the Army paid for.

21 Q What's your present occupation?

22 A I am Professor of Law at Howard University Law

23 School, and I also serve as Legal Counsel to the Mayor of

24 Washington, D.C.

25 Q Are you his personal attorney, sir?

Reid - Direct

A No, I am not. I am not for his personal affairs. I am his counsel as opposed to the City Council.

Q And that's a position in the District of Columbia government?

A Yes; yes, sir.

Q Now, how long have you served as counsel for the mayor?

A Since -- for about three-and-a-half years, since this mayor was elected.

Q Now, how long have you been a Professor of Law at Howard University Law School?

A In excess of 35 years.

Q Have you ever held any other positions with the Howard University School of Law?

A Yes, for a period of time, I was Assistant Dean and presently I am Chairman of the University faculty, the faculty organization for the University.

Q Now, what is your educational background?

A Public schools in Wilson, North Carolina; college in John C. Smith and Howard Universities, and I received my law degree from Harvard in Cambridge, Massachusetts.

Q What year, sir?

A I think I came out in 1940. I was admitted to the Bar in 1945. I guess I graduated from law school in

Reid - Direct

1944. Some of that period was a period of service in the Army, so I was interrupted in the law school.

Q In what jurisdictions are you permitted to practice law?

A Massachusetts, District of Columbia, and three or four of the federal circuits and the Supreme Court of the United States.

Q Have you ever published any writings, sir?

A Yes. I have co-authored chapters in several books. I have published several law review articles.

Q And what courses do you teach in law school?

A Presently, constitutional law, administrative law and conflicts.

Q Now, we have heard, sir, that Mr. Borders was a student at the Howard University Law School. Were you acquainted with him during that period?

A Yes. Shortly after he entered, I became acquainted with him.

Q And was that as a professor-student --

A I was the professor and he was a student.

Q Did you know Mr. Borders prior to that time, sir?

A No, I don't remember. No, I don't think so. I'm sure not, because I remember -- I think the question that started our friendship, our relationship, off was I

Reid - Direct

wanted to know whether or not he was a kin to the Dr. Borders here in Atlanta.

(Continued without omission.)

Reid - Direct

BY MR. SHORTER:

Q Now, after Mr. Borders graduated from law school, did you have any further contact with him, any association with him?

A Yes. I followed his career in the District of Columbia and at times we were associated together in legal matters. I associated with Mr. Borders in the drafting and filing of appeals in the Second Circuit, the District of Columbia, and the Supreme Court of the United States.

Q You assisted him with collecting and writing --

A Yes.

Q -- research work in various cases?

A Yes, sir. I did.

Q And I take it that by doing that you were able to observe him closely, worked with him closely in those cases?

A Yes, sir.

Q Would that have been one or two cases, or was it more than that?

A At least four or five I can remember.

Q Now, have you had any other direct association with Mr. Borders?

A Well, I have been active, since coming to Howard in 19[illegible], in the National Bar Association and the community

Reid - Direct

and other activity, and our paths have crossed in those connections. I worked with him in the National Bar.

Q Are you a member of the National Bar Association?

A Yes, sir.

Q What would you estimate the membership of the National Bar Association to be, if you know?

A I don't know.

Q Is it a large organization or small?

A It's a national organization of black lawyers throughout the United States.

My impression is that at the annual convention there are at least a couple of thousand people there. How many are guests or how many are lawyers, I don't know.

Q Did you attend the last convention?

A Yes, I did, sir.

Q Where was it held?

A I think it was in Detroit.

Q In Detroit. During what month?

A July, August -- I think August.

Q August of 1971?

A Yes.

Q Was Mr. Borden there?

A Yes.

Q And in what capacity?

Reid - Direct

A Mr. Borders, as I remember, was the retiring president; that is, this was the completion of his year of service. And the president-elect was installed. Yes.

Q Now, have you had, during your years of being in Washington and being an attorney, had an occasion to handle litigation, legal matters in the District of Columbia in various courts, there?

A Yes, sir.

Q And despite your other positions, such as law professor, counsel to the mayor, you still have an opportunity to go to court, from time to time?

A Yes. Yes, sir.

Q And do you practice in all the courts of the District of Columbia?

A Yes, sir, to the extent that I do practice. I work quite a bit with the NAACP, and other civil rights organizations. That is the nature, generally, of the private practice that I am in.

Q Do you know many attorneys in Washington?

A Yes, sir. I've talked to quite a few of them.

Q And does this cover the whole spectrum, black, white, civil, criminal lawyers?

A Yes.

Q Corporate lawyers?

Reid - Direct

A One of the assignments I have with the mayor's office is working with the legal community, the various Bar organizations, the various activities of the Bar, you know, affecting the D. C. government and what have you.

Q And is Mr. Borders active or inactive in many of these --

A Very active. Very active.

(Continued without omission.)

1 Reid - Direct

2 BY MR. SHORTER:

3 Q Now, would the community of people that you know,

4 who know Mr. Borders, would that be large or small?

5 A Well, I would think it large in terms of the

6 leadership community of Washington, D.C., and leadership in

7 the United States affecting lawyers.

8 Q And is your knowledge of people who are acquainted

9 with Mr. Borders confined only to the legal profession?

10 A No. No. No. Oh, no. No. Because our activity

11 embraces some community activity, and I know people who work

12 with him in different community assignments, what have you.

13 Q Now, among the people that you know who know

14 Mr. Borders, can you tell us what his reputation is for

15 probity, integrity, honesty and morality?

16 A It is the highest.

17 Q And are you able, sir, to express an opinion,

18 personal opinion,based on your direct contacts with

19 Mr. Borders over the period of time that you've known him?

20 A Yes, I am. He enjoys an exceptionally good and

21 high reputation of professional and personal reputation in

22 the District of Columbia and in the nation, and in the areas

23 which I've outlined.

24 Q And what would be your personal opinion about

25 Mr. Borders in regard to the traits that I've mentioned of

Reid - Direct

honesty, probity and integrity?

A Excellent.

Q Thank you very much, sir.

THE COURT: Cross-examination.

MR. RICHTER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. RICHTER:

Q Mr. Reid?

A Yes, sir.

Q Have you been in the courtroom hearing the evidence in this case?

A No, sir. I have not.

Q Have you ever heard the tape-recordings that were played for the jury in this case?

A No, sir. I have not.

Q I take it you consider yourself a friend to Mr. Borders. Is that correct?

A Yes, I do.

Q And given the fact that you are obviously an important person in Washington, D.C., would you expect Bill Borders to ever trade on his relationship with you for personal gain, without your knowledge and consent?

A No, I would not.

Q Thank you.

THE COURT: Redirect?

MR. SHORTER: No, Your Honor.

THE COURT: Thank you, Professor Reid. You may step down.

THE WITNESS: Thank you, Your Honor.

(Whereupon, the witness was excused from the courtroom.)

MR. SHORTER: Can we come to the bench for just a moment, Your Honor.

THE COURT: Counsel may approach the bench.

(Proceedings at side bar.)

MR. SHORTER: Forgive us, Your Honor, but it appears that Reverend Pruitt, who is our last witness, has not come to the courthouse yet. He came in last night from Washington. He is Mr. Borders' minister. He came in last night quite late and I met with him to talk to him about his testimony, and he was then taken over to the hotel. It was after midnight. We told him we wanted him here at ten minutes of nine, and he hasn't arrived yet. He would be our last witness.

Mr. Borders is out checking now, out looking for him now. Mr. Arrington has a call into his hotel. I don't know what the response has been.

THE COURT: If he is not here perhaps we could

excuse the jury; I could hear counsel on any motions as at the close of all of the evidence, and get the timing set for the closing arguments. If he hasn't arrived by that time, we could just recess.

MR. SHORTER: All right, Judge. Thank you.

(Continued without omission.)

Mr. ANDERSON. The third witness bears upon the same point, but a slightly different aspect. I.J. Cunningham is an attorney in Florida, former Vice President of the National Bar Association, who also knew Mr. Borders. He testified at the 1983 trial of Judge Hastings, who had acquaintanceship with Mr. Borders, and he also testified that he had observed Mr. Borders as a private, devious and frequently difficult to understand person.

Like Mr. Chisholm, he brings independent information concerning what has been described as eccentricities of personality traits. He testified at Judge Hastings' trial and we offer his testimony here.

The CHAIRMAN. Again, I believe Mr. Cunningham's testimony was covered in Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF I. J. CUNNINGHAM IN *UNITED STATES v. HASTINGS*

1 We'll proceed. I understand the defense
2 has one additional witness and after that witness has
3 completed his or her testimony we'll be excusing you
4 for the evening.
5 Is it just one witness that is ready?
6 MS. WILLIAMS: Yes, your Honor.
7 I. J. Cunningham.
8 Thereupon--
9 I. J. CUNNINGHAM
10 was called as a witness by the Defendant and, having
11 been first duly sworn, was examined and testified as
12 follows:
13 THE CLERK: Would you state your name,
14 please?
15 THE WITNESS: My name is I. J. Cunningham,
16 West Palm Beach, Florida.
17 DIRECT EXAMINATION
18 BY MS. WILLIAMS:
19 Q Good afternoon.
20 A Hello.
21 Q Mr. Cunningham, where do you live?
22 A I live in West Palm Beach, Florida.
23 Q And--
24 A And my office address is 1897 Palm Beach
25 Lakes Boulevard.

Cunningham - direct

Q What is your profession?

A I am an attorney, have been practicing in the State of Florida almost twenty-five years.

Q Thank you.

Mr. Cunningham, do you know Bill Borders?

A Yes, sir--I am sorry--yes, ma'am, I do. Excuse me.

Q That is quite all right, I think.

And how well would you say you know Bill Borders?

A Well, I know him fairly well and let me explain that because of the fact that Bill Borders belongs to the same organization that practically all black lawyers belong to--that is, the National Bar Association--and, of course, I have been affiliated with the National Bar Association for almost as long as I have been practicing law, and it was within the National Bar Association that I became acquainted with Bill Borders.

And I believe that has been fifteen, sixteen years.

Q Over that fifteen or sixteen-year period, would you say that you have had an opportunity to make some, draw some opinion as to what kind of personality

Cunningham - direct

Bill Borders has?

A Well, I think so, for the reason that I was a national officer with the National Bar Association, myself, and--

Q When was that?

A That was in--I believe I was elected the--appointed in 1969, and I have worked very closely with the Bar Association.

In fact, I was a National--vice-president of the National Bar Association back in 1971 or '72.

Prior to that time, I was on the Board. And I have remained on the Board most of the time up to the present time.

At the present time, I am not an elected person of the Board, I am just an appointed.

Q All right.

But over this period of time, you have been able to form some opinion about the personality of Bill Borders?

A Well, I think so because Bill and I, in fact, we were sort of like political partners from time to time when we would be associated with the National Bar Association.

I knew-- Well, in fact, I know Bill

1 Cunningham - direct

2 Borders' partner, his former partner, and his former

3 partner and I were quite close friends. We are quite

4 close friends.

5 I have known Bill as a result of being

6 in the National Bar Association, in the political

7 gathering in the National Bar Association, so I have

8 a pretty good idea the type of person Bill Borders is.

9 Q All right. Tell us.

10 MR. RICHTER: Your Honor, can we approach

11 the Bench?

12 THE COURT: Counsel may approach the

13 Bench.

14 [Sidebar conference between the

15 Court and counsel out of the

16 hearing of the jury as follows:]

17 MR. RICHTER: Your Honor, I have been

18 extremely indulgent with these questions about Bill

19 Borders' personality, none of which is relevant.

20 But when she asks the question, "What

21 kind of person is Bill Borders?" I couldn't even ask

22 that about the defendant. I think this is entirely

23 improper.

24 THE COURT: Ms. Williams?

25 MS. WILLIAMS: Of course, your Honor, we

Cunningham - direct

think it is very relevant to show that Bill Borders is a clandestine, secretive kind of individual and most people perceive him that way, aloof, and that kind of character is totally in keeping with what he has been doing; that Al Hasting would not know he's very private and secretive and would not know all that he is doing.

Nobody that deals with Bill Borders knows all that he is doing.

THE COURT: You are familiar with Evans Rule 404?

MS. WILLIAMS: Yes, I am.

THE COURT: How do you fit it in there?

MS. WILLIAMS: Into Rule 404?

We are offering it, your Honor, as character kind of evidence.

THE COURT: You are trying to prove by evidence with respect to his character that he acted in conformity with that particular trait on a particular occasion?

MS. WILLIAMS: Yes.

THE COURT: And that is, I assume, the Fontainebleau Hotel?

MS. WILLIAMS: Yes.

THE COURT: And Rule 404 would appear

Cunningham - direct

clearly to preclude it?

MS. WILLIAMS: Your Honor, what can I say except--

MR. RICHTER: I just don't see where any of this is particularly competent evidence. It really doesn't seem to tend to prove anything other than in the most remote way.

THE COURT: The Court understands it is being offered as character evidence to the purpose of proving that he acted in conformity with that particular trait of his character on the occasion of the Fontainebleau Hotel.

MS. WILLIAMS: Yes.

THE COURT: Rule 404 makes it entirely clear that it is not admissible.

The objection is sustained.

[Sidebar conference concluded and the following proceedings were had in open court:]

THE COURT: The objection to the pending question has been sustained, ladies and gentlemen.

MRS. WILLIAMS: Thank you, Your Honor.

BY MRS. WILLIAMS:

Q Mr. Cunningham, have you had occasion to speak with Bill Borders on the telephone over these period of years?

A Oh, sure, I have, many times we have spoken.

Q Have you ever hung up the phone after speaking with Bill and never been quite sure what he said?

A Well, you would have to really know Bill Borders to really know him, to understand him, because Bill Borders is a type of person, private, he's such a private person, that it was very difficult to understand him many times. You just could not always understand Bill Borders, and you would have to be a person who would have dealt with Bill Borders in terms of politics through the years in which I have dealt with him in the organization. So he was a quite devious, may I say, difficult type of person to understand.

Q Did I understand you to use the word "devious"? Would you assign that word to Bill Borders?

A Maybe that would be a little too extreme for me to assign to Bill Borders, but he was very

Cunningham - direct

difficult to understand. He was a very private person.

Q Very private. Would you say he wielded a lot of influence?

A Oh, yes, yes, very definitely.

Bill Borders was a type of person who I know politically he was in the Carter Administration and he was the President of the National Bar Association for a period of a year.

MRS. WILLIAMS. All right. I have no further questions, Your Honor. Thank you.

THE COURT: Cross examination?

MR. RICHTER: I have nothing.

THE COURT: Thank you, Mr. Cunningham. You may step down, sir.

THE WITNESS: Thank you.

THE COURT: And the Court will understand that a witness who has testified is finally excused unless counsel requests that witness remains.

[Witness excused.]

THE COURT: Does the defendant have another witness?

MRS. WILLIAMS: No, Your Honor, we have no further witnesses today.

THE COURT: All right. Well, Madam

Mr. ANDERSON. The fourth witness we would offer by way of prior testimony is the testimony of Willie E. Gary. Mr. Gary is, again, a Florida attorney. He is a member and the Past President of the Florida affiliate of the National Bar Association.

He testified that he had known Mr. Borders through the National Bar Association and were mutual friends since 1975. He testified specifically that he had had lunch with Mr. Borders a couple of times when he was in the area and that, on one occasion, Mr. Borders did not show up as planned. Again, like Mr. Chisholm's and the prior witness' testimony, it bears upon some of Mr. Borders' personality traits that have been identified as relevant in this case.

The CHAIRMAN. Again, that is prior testimony that was discussed in the Committee's Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF WILLIE E. GARY, JR. IN *UNITED STATES v. HASTINGS*

1 [Sidebar conference concluded and
2 the following proceedings were
3 had in open court:]
4 THE COURT: Ladies and gentlemen, the
5 Court is going to have to hear testimony of this wit-
6 ness out of your presence before determining whether
7 it is proper, relevant testimony for you to hear.
8 This should not take more than five or
9 ten minutes and so the Court will again excuse you for
10 that length of time.
11 [The jury left the courtroom and
12 the followings proceedings were
13 had:]
14 THE COURT: The record may reflect that
15 the jury has departed the courtroom and the witness
16 will be sworn.
17 Thereupon--
18 WILLIE E. GARY
19 was called as a witness by the defendant and, having
20 been first duly sworn, was examined and testified as
21 follows:
22 THE CLERK: State your name and spell
23 your last name.
24 THE WITNESS: Willie Gary, G-a-r-y.
25 THE COURT: And your firstname, sir?

THE WITNESS: Willie.

THE COURT: W-i-l-l-i-e?

THE WITNESS: That is right, your Honor.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Where do you reside, Mr. Gary?

A In Stuart, Florida.

Q And what is your profession?

A I am a lawyer.

Q And are you associated with the NBA?

A Yes, I am. I am a member and I've also served as president of the Florida affiliate of the National Bar Association.

Q Do you know Bill Borders?

A Yes, I do.

Q How long have you known him?

A I have known him since 1975 when I first came into the Bar.

Q Do you know him outside of the Bar?

A Well, I have had a chance to meet him while he was in Florida. I worked in the Fort Pierce area and he, I think--his mother is from that area so he would call from time to time after they moved away to take care of some family business, businesses.

So, I got a chance to know him while he was, you know, in that area. Other than meeting him at the Bar, and meeting him at Florida meetings, and what have you.

Q When he was in that area on family business, did he make an arrangement to meet you somewhere?

A Yes. Bill came down to Fort Pierce. I think he had moved his mother to Washington with him and they owned some property or something in Fort Pierce so he would come back from time to time and Bill Borders and Ralph Flowers, another lawyer in that area, that as a matter of fact Ralph knew him a little bit better than I did, we scheduled to meet a couple of times while he was in the area for lunch because he was from out of town and we always try to, you know, accommodate the out of town lawyers by having lunch with them or maybe after work going out, taking them out to dinner or having a cocktail or something like that.

Q Was this to be a purely social meeting?

A Yes.

Q And what happened?

A Well, on this one occasion that we were

supposed to have met over at the Holiday Inn Oceanside for lunch Bill Borders didn't show up. He did call me later but he didn't show up for lunch.

Q All right.

MS. WILLIAMS: Your Honor, that would be our proffer as to the making arrangements for social date and not showing up.

THE COURT: Does the Government wish to add anything to the proffer?

CROSS EXAMINATION

BY MR. RICHTER:

Q I will just ask, this happened around 1978 or 1979?

A I don't recall exactly what year it was. Probably it would be sometime in that area. I am not sure exactly what year it was. Because he was there a couple of times that I had a chance to talk to him and to know that he was in the area.

It could be around that time, though.

Q And at that time is it fair to characterize your relationship as more professional than a close friend?

A Well, a combination of both because, you know, going to the NBA meetings, NBA is sort of like a

fraternity, really. You really get to know the guys. It is a small group and, while it is professional you still get into the people because it is a small group and it is that kind of close knitness that is within the group.

Q Would you say in 1978 or '79, or whenever this luncheon took place, that you and Mr. Borders were close friends?

A We were not close friends.

Q You say he did contact you later?

A Yes.

MR. RICHTER: No further questions, your Honor.

THE COURT: Ms. Williams, anything further?

MS. WILLIAMS: No further questions in the proffer.

THE COURT: There is objection?

MR. RICHTER: Yes, your Honor. It clearly is irrelevant.

THE COURT: Ms. Williams?

MS. WILLIANS: Your Honor, it goes to the credibility of our testimony that Bill Borders was prone not to show up for social engagements from time to time

and we think it is relevant to show that, that we are not pulling an isolated event out of the air and saying Bill Borders just made a date and then did not show.

THE WITNESS: I might add that he did it twice.

THE COURT: Well, now, wait a minute.

MS. WILLIAMS: We think it is relevant background for the jury, your Honor.

THE COURT: As the Court indicated at the Bench, the objection is sustained. The issue in this case is as to whether Mr. Borders failed to keep a prior appointment with the defendant on a particular date. The Court assumes it was at the Fontainebleau?

MS. WILLIAMS: That is correct, your Honor.

THE COURT: And the fact that he, Mr. Borders, failed to keep a luncheon appointment with Mr. Gary in Fort Pierce in 1978, '79 is not relevant. It does not, in the Court's view, have any tendency to make the fact in issue more probable or less probable then it would be without that evidence.

Counsel apparently is now offering the evidence under Rule 406 which permits evidence of the habit of a person and indeed as the Court indicated at

Gary - cross

the Bench, this evidence would not meet the requirements for admission as evidence of a habit under that rule.

Moreover, to the extent that the evidence might be considered to have some probative value it is that probative value which would in any event be extremely remote, is substantially outweighed by the danger of confusion of the issues and misleading the jury and by consideration of undue delay and waste of time and therefore is alternatively excluded pursuant to evidence Rule 403.

The defendant's rights are, of course, protected. The Court understands there is no further testimony from Mr. Gary?

MS. WILLIAMS: No, your Honor. We proffered only as to the evidence objected to.

THE COURT: Right. Then you may step down, sir, and thank you very much.

MS. WILLIAMS: Your Honor, we proffered only as to the evidence objected to. We do wish to elicit further testimony from the witness.

THE COURT: Not along the lines indicated?

MS. WILLIAMS: Not along the lines proffered.

THE COURT: All right. Then the witness will again be sworn when the jury returns and proceed with direct examination along the other lines.

Before the jury comes back, with respect to that habit, in addition to the Levin case which the Court referred to at the Bench, 338 F.2d 265-272, (D.C.Cir.1964), the Court refers counsel to Reyes v. Missouri Pacific Railroad Co., 589 F.2d 791-794, (5th Cir.1979) and United States v. Holman, 680 F.2d 1340, 1550-51 (11th Cir.1982).

And the jury may then be recalled.

THE BAILIFF: Yes, your Honor.

[The jury entered the courtroom and the following proceedings were had:]

Thereupon--

WILLIE E. GARY

was called as a witness by the defendant and, having been duly sworn, was examined and testified as follows:

THE CLERK: Would you state your name, please?

THE WITNESS: Willie Gary, G-a-r-y.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Mr. Gary, where do you reside?

A In Stuart, Florida.

Q And what is your profession?

A I am an attorney.

Q And do you know Bill Borders?

A Yes, I do.

Q How long have you known Bill Borders?

A I have known him since 1975 when I first came into the Bar.

Q All right. Have you had occasion to

Gary - direct

observe him in his demeanor?

A Yes, I have, many times.

Q Will you describe Bill's personality as you perceive it?

A Yes. Bill Borders has a funny type personality in that he--he cannot speak that well. He is not that very articulate and he tries to hide that. And he likes a lot of power and he tries to get things done without having to actually do a lot, to do it.

So I guess, you know, like he's there but you don't know how he got there. That type--he's that type person. You know, that is how I find him to be, as coming up as a young lawyer, working in the Bar, because he was a vice-president when I first came into the Bar. He later became president and really, based on work, still today I don't see how he became president. He's very political, so he got there.

Gary - direct

BY MS. WILLIAMS:

Q I see.

Do you know Al Hastings?

A Yes, I do.

Q Have you had occasion to-- How long have you known Al Hastings? Pardon me.

A Since I have been a lawyer, and that's been since '74.

Q Since '74?

A And before.

Q Do you know of Al's truth and veracity?

MR. RICHTER: Objection, your Honor.

Could we have these questions be in the proper form?

THE COURT: Yes. The objdction is sustained.

The witness-- The question may be rephrased in proper form.

BY MS. WILLIAMS:

Q Did you participate in scrutinization of the suitability of Alcee Hastings for appointment to the Federal Bench on behalf of the National Bar Association?

MR. RICHTER: Objection, your Honor.

Gary - direct

THE COURT: The basis?

MR. RICHTER: This is not proper character testimony.

THE COURT: Sustained.

MS. WILLIAMS: Your Honor, we will have to approach the Bench, I'm afraid. I'm totally confused.

THE COURT: Counsel may approach the Bench.

[Sidebar conference between the Court and counsel out of the hearing of the jury as follows:]

THE COURT: I was apprehensive that counsel were not aware of the problem.

Rule 405 sets forth the means by which character, truth and veracity and so forth can be shown either by the witness testifying as to reputation or the witness testifying as to his opinion.

MS. WILLIAMS: Uh-huh.

THE COURT: And you may, of course, lay any predicate by way of establishing the extent to which he--how many contacts he has had with the witness and that type of thing.

MS. WILLIAMS: That's what I am doing,

Gary - direct

your Honor.

THE COURT: But your first question was, do you know--

MS. WILLIAMS: His reputation for truth and veracity.

THE COURT: No. You didn't say "his reputation."

MS: WILLIAMS: What did I say?

THE COURT: The reporter can read it back, but you said--

MS. WILLIAMS: Anyway, that's what I will say.

JUDGE HASTINGS: I was telling her she didn't say that.

MS. WILLIAMS: In my head, I did and, orally, I will.

But, your Honor, I would like to proceed first to establish--to lay the predicate as to how he gained that knowledge of the reputation.

THE COURT: You can always do that.

MS. WILLIAMS: Okay.

[Sidebar conference concluded and the following proceedings were had in open court:]

Gary - direct

THE COURT: Counsel is going to rephrase the question.

BY MS. WILLIAMS:

Q Mr. Gary, did you participate in a scrutinization of the suitability of Alcee Hastings to assume the Federal Bench?

A Yes, I did.

Q And in that capacity, did you learn of Al's reputation for truth and veracity?

A In that and also long before that.

Q Would you tell us about that?

A Well, I knew Alcee before he ever knew me because, you know, when I first decided to go to law school, there were a few lawyers that I have heard their names before and I have heard other lawyers talk about them because I had been inquiring about going to law school long before I went to law school, and I think it was Mr. T. J. Cunningham and Alcee Hastings and Delano Stewart and a few other lawyers around the State of Florida whose name always come up as some of the leading lawyers in the State of Florida, and I got to know him that way, from just inquiring from other lawyers about some of the lawyers in the State.

But after I got into the Bar, then I

Gary - direct

really got to know Alcee because of his involvement in the Bar with young lawyers and also I got to know him because--and Stewart--I am involved with the young people in the group that I am in, the Young Men's Progressive Association.

And what we try to do is work with young kids and try to steer them in the right way and keep them off the streets and keep them away from drugs and things like that.

So I recall it was just as I got back in Stuart and opened up my practice that we were having a banquet and we needed a speaker because we were trying to get off the ground, the group was, and we didn't have any money or anything like that, so I think it was T. J.--somebody told me that Alcee would do it because he had been known for speaking throughout the State and he has a good name as a good speaker, and we didn't have the kind of money that we thought it would take to get a name such as Alcee Hastings to come speak for us, and I was almost at one point afraid to call him because I had, you know, just gotten into the Bar when we started this and, although I had heard of him, I didn't know him that well at that time.

But I did have the opportunity to call

Gary - direct

him and I was just--I was surprised that he said he would come, and he didn't charge us anything and, you know, it was that kind of attitude that he displayed that really made me feel like he was the type of person I would want as a friend.

So as a result of that, and I think coming up to speak at a couple of church engagements that I asked him to come to, and working with him in the Bar, I got to know him real good, and I also became president of the Black Lawyers & Judges in the State of Florida and, you know, from time to time you would have to call on people to help you, you know, do a lot of work, because a lot of times you have a lot of people that say they are going to do things but they really don't do them, when you're trying to get something done, and I came into the Bar at a time when there was just a lot of work that was needed to be done, and I couldn't do it all myself and I needed some people that you could really count on, you know, some people that were willing to work and not just talk, and Alcee was one of those type of people, you know.

He spoke at different times, he did seminars, just about anything that you could ask him to do as far as working with the Bar, he would do it.

Gary - direct

And then I really got a chance to know the guy then because we were working together hand-in-hand for some common causes.

MS. WILLIAMS: I have no further questions, your Honor.

MR. RICHTER: No questions, your Honor.

THE COURT: Thank you, Mr. Gary. You may step down, sir.

[Witness excused.]

THE COURT: Perhaps we will give you an extra five minutes for lunch, ladies and gentlemen. Your lunch may have arrived. It is due at quarter of 1:00.

We will recess at this time until 2:00 o'clock.

I do remind you again not to discuss this case during any of these recesses. I am sure you will not.

The court will be in recess until 2:00 o'clock this afternoon.

[At 12:40 p.m., a luncheon recess was taken.]

- - - - -

1 AFTERNOON SESSION

2 [The trial reconvened at 2:07 p.m.]

3 [The following proceedings were

4 had out of the presence of the

5 jury:]

6 THE COURT: Good afternoon, Counsel and

7 ladies and gentlemen.

8 I asked them to hold the jury.

9 I understand that there were some spec-

10 tators who could not get in the courtroom and were

11 seated in the space reserved for the press. I thought

12 it might help if I indicated from the Bench that the

13 seats as I face to the left, that block, has been

14 reserved for the news media who, of course, have much

15 broader dissemination than the average spectator.

16 The space on the right, as I observe it,

17 is available to others who wish to view the trial, but

18 it will have to be on a first-come first-serve basis.

19 Unfortunately, this is the only court-

20 room available to us and this indeed is the courtroom

21 which counsel indicated they would prefer.

22 And with that announcement, the jury may

23 be recalled.

24 [Whereupon, a spectator arose.]

25 THE COURT: Sir, you will have to be

seated.

MS. WILLIAMS: Your Honor, before you return the jury, may we approach the Bench for a moment?

THE COURT: Counsel may approach the Bench.

[Sidebar conference between the Court and counsel as follows:]

MS. WILLIAMS: Your Honor, we have Judge Hoeveler outside who is prepared to come in here and make the proffer, although it is 2:00 o'clock instead of 3:00 o'clock, regarding the Judges.

If the Court would indulge us and let us bring him in so he can make that proffer. He has recessed his trial for this purpose.

THE COURT: All right.

MR. RICHTER: How long do you expect it to take?

MS. WILLIAMS: Twenty minutes.

MR. RICHTER: Would there be other witnesses after that?

MS. WILLIAMS: One.

MR. RICHTER: You anticipate we would argue after the other witness?

MS. WILLIAMS: Yes.

THE COURT: Well, I will call the jury in and explain to them that I have to hear that.

There's a gentleman standing up back there who proposed to speak to me.

THE SPECTATOR: Judge, your Honor, I would like to have your permission to speak.

THE COURT: I'm sorry, sir. You will have to address one of the Marshals.

If there's a message--

THE SPECTATOR: I need to address the Judge.

THE COURT: I'm sorry, sir.

[Sidebar conference continues as follows:]

THE COURT: Do you know who this gentleman is?

JUDGE HASTINGS: I knew him a long time ago but I don't know his last name. His first name--

THE COURT: We will carry on.

Apparently there were a group that were in the press seats and the Marshal had to remove them and there are people outside who can't get in.

But this is the only courtroom, and I understand that you don't wish me to try to get the larger courtroom.

JUDGE HASTINGS: Well, I tell you, I'd like for us to proceed here. The other courtroom is being used.

THE COURT: Yes, I know it is being used.

[Sidebar conference concluded and the following proceedings were had in open court:]

THE COURT: The jury may be recalled.

[The jury entered the courtroom and the following proceedings were had:]

THE COURT: Madam Forelady and ladies and gentlemen, I have asked that you be brought back into the courtroom simply for the purpose of telling you that I am going to have to hear counsel again out of your presence.

It is estimated for about twenty minutes. And I thought perhaps the exercise of coming in and out would help you digest your lunch.

But I am going to excuse you at this time. I understand within twenty minutes or so you will be called back and then we will continue until our usual 4:30 with probably a brief mid-afternoon break.

Mr. ANDERSON. The fifth witness we are offering by prior testimony falls in the same category, that is Delano Stewart, also a Florida attorney. He knew both Judge Hastings and Mr. Borders. He testified in 1983 about Mr. Borders' practices and eccentricities. He also testifies and he bears upon the further point of efforts Judge Hastings made on behalf of Hemphill Pride. We offer his testimony, both as it bears upon Mr. Borders' eccentricities and as it bears upon Judge Hastings' relationship with Hemphill Pride.

The CHAIRMAN. Again, this is testimony that was discussed in committee Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF DELANO STEWART IN *UNITED STATES v. HASTINGS*

1 MS. WILLIAMS: My apologies to the
2 Court.
3 Thereupon--
4 DELANO STEWART
5 was called as a witness by the Defendant and, having
6 been first duly sworn, was examined and testified as
7 follows:
8 THE CLERK: Will you state your name,
9 please, and spell your last name?
10 THE WITNESS: Delano Stewart,
11 S-t-e-w-a-r-t.
12 DIRECT EXAMINATION
13 BY MS. WILLIAMS:
14 Q Mr. Stewart, what is your profession?
15 A An attorney.
16 Q And where do you practice.
17 A In Tampa, Florida.
18 Q And are you active in the organized Bar?
19 A Yes, I am.
20 Q What organized Bar are you active in?
21 A I am a member of the American Trial
22 Lawyers Association, the American Bar Association, the
23 National Bar Association, the Georgia Edgecombe Bar
24 Association.
25 Q All right.

Stewart - direct

And do you know Alcee Hastings?

A Yes, I do know Judge Hastings.

Q How long have you known him?

A For approximately twenty years.

Q And under what circumstances have you known him?

A First of all, Judge Hastings' first wife and my first wife were good friends. And I first met him the year I got out of law school at his wedding when he married Dolores Hastings.

Q Has your friendship been a rather intimate friendship over the years?

A We have been the best of friends for the last twenty years.

We have involved ourselves in a multiplicity of civic endeavors together. The two times that he ran for State-wide office, I ran his campaign in Hillsborough County, both when he ran for U. S. Senate and for the Public Service Commission.

Q Then, would you know his reputation in the community for truthfulness and untruthfulness?

A I certainly do.

Q Would you please--

A Throughout the State of Florida, I would

say his reputation is for truthfulness.

Q Is for truthfulness?

A Is for truthfulness to a fault.

Q To a fault? Could you explain what you mean by "to a fault"?

A Al has never been known, in spite of whatever the controversy was, if he had an opinion, no matter what the rewards or the punishment, that he would state it and he would state it forcefully and often persons, when you get in positions of power, you get branded but he has always been a person who is forthright and stood by his guns.

Q Can you think of any specific occasion on which Al was truthful to a fault?

MR. RICHTER: I would object, your Honor; form of the question.

THE COURT: The objection is sustained.

BY MS. WILLIAMS:

Q Do you know Bill Borders?

A I know Bill Borders. We were in law school together. Met him in 1962.

Q All right.

And over the years, what kind of contact have you had with Bill Borders?

Stewart - direct

A Well, frequent contact. In fact, in 1968 or '69, Mr. Borders invited me to join the National Bar Association and at that time--for the specific purpose of putting together what was known as the Southern Strategy.

It had been heretofore that the National Bar had generally been controlled by persons of the Old Line, older members of the Bar Association of Washington and Chicago because they had more black lawyers in those large metropolitan areas.

And because of the fact that I was quite active in the Civil Rights area and I knew most of the lawyers in the Southeast, I joined the National Bar and became very active from that point on.

And Bill and I had frequent correspondence.

Every time I went to Washington, he picked me up. He visited me approximately ten times over the last twenty years, by staying in my home or in hotels in Tampa.

Q All right.

In that twenty-year period that you have known Bill, did you say he picked you up from the airport when you traveled to Washington, D.C.?

Stewart - direct

A Every time that I went to Washington, either he picked me up personally, had someone from his ofice. But ninety-eight percent of the times he did so personally.

Q Over that twenty-year period of time, have you had frequent telephone contact with Bill?

A Most frequent.

Bill and I also, because of the fact that a mutual classmate of ours, Ben Brown, from Atlanta, Georgia, was involved actively in the Carter Campaign and Bill, Ben and myself were on that committee and during that period of time had very frequent contacts.

Q All right.

So would you say that when there was a special event occurring that frequency of the telephone contact between you and Bill picked up?

A Well, Bill was a telephonaholic, in a sense, and also he was somewhat paranoid and not--before this trial, not knowing why, many occasions Bill would call me at my office, ask me to call him at another number which generally would be a pay phone, and the reason for that I did not know. And--but that was a pattern that he had established probably over the last

Stewart - direct

four or five years.

Q All right.

So, he had some kind of paranoia about using the telephone?

A Well, I would say paranoia and also he called a great deal. But I don't know why. It would be conjectural.

But many times when he was placing calls which I did not consider to be sensitive at all, about fundraising matters or places of meetings, he would be very secretive and sort of surreptitious about it.

Q Do you know Hemphill Pride?

A I know Hempy Pride and I first met hempy because he was the best man at Judge--Judge Hastings' wedding.

Q All right.

And so how long have you known him?

A Since 1964. About eighteen years.

Q Okay.

Has there been frequent contact between you and Hempy?

A I tell you that the contact with Mr. Pride was limited primarily to the fact that when I

Stewart - direct

was a regional director for the Bar Association and he was active in the Bar Association, I would see him at meetings.

Primarily our contacts were through Judge Hastings. I did not have that much contact until he got in trouble and then he was in Bill Borders' office, and because of the fact that Bill and I were engaged in conversation, I know that--

Stewart - direct

MR. RICHTER: Your Honor, I would object to possible hearsay statements at this point.

THE COURT: Mr. Stewart, would you just answer the question asked of you and if Ms. Williams wants something more she will ask that. Just answer the particular question.

You have answered this question. You may ask another.

BY MS. WILLIAMS:

Q So, you were aware of the difficulty that Hempy Pride encountered?

MR. RICHTER: I would object again to the former, the matter we had discussed previously.

THE COURT: Yes, Ms. Williams. The Court cautions you again in leading questions.

BY MS. WILLIAMS:

Q In summary, you just stated that you were aware of the problem that Hemphill had with the law. Is that correct?

A I was aware of the fact, because of the fact that I had talked personally to him. I was aware of the fact that he had been indicted in South Carolina.

After his conviction Judge Hastings and

Stewart - direct

I talked about what he was doing to help his family and I also know that I called Bill Borders' office and that he was in the office working while he was waiting on his appeal. I know that personally.

Q All right. Thank you. Now, do you know whether or not Judge Hastings was assisting--attempting to assist Hemphill with this problem?

A He did a lot in terms of personal help. I know that he gave him money. I know that he gave his family money. I know he stopped in Tampa and told me he was going to visit him after he had been incarcerated.

He also solicited from me my help in terms of monetary fashions which I, at that time, I had five children and I was unable to give him money. But on many occasions during Hempy's problems Judge Hastings would ask for his assistance.

Q And when was this that Judge Hastings asked you if you could contribute to Hempy?

A All right. Now, Ms. Williams, first, the first time that he asked was prior to the time, and after he got indicted and after he was--after his conviction when he was in Bill's office.

The latest time was somewhere between

Stewart - direct

July and August of '81. Judge Hastings came to Tampa and he also called me to assist him in helping Mr. Pride get his license back. And he said he would notify me when the time would be appropriate.

Q All right. So you, as a result of this, know for a fact that Judge Hastings was attempting to assist Hempy?

A Yes, ma'am. I do. I certainly do.

MS. WILLIAMS: I have no further questions. Thank you.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. WEINGARTEN:

Q Sir, my name is Reid Weingarten. I am one of the Government attorneys.

You testified about a meeting or some knowledge you have about an occasion when Mr. Pride was in Mr. Border's office.

A This is correct.

Q When was that?

A Mr. Weingarten, I--let's see. It was sometime after his conviction. I imagine it was somewhere in the middle '70's.

As far as the exact time I couldn't tell

Stewart - cross

you.

Q Is it fair to say it was after the jury found Mr. Pride guilty but before he had gone to prison?

A This is correct.

Q Now, concerning Judge Hastings' assistance to Mr. Pride, now you have testified that he certainly helped him financially with his family. Is that right?

A This is correct.

Q Do you know any legal steps or legal assistance that Judge Hastings provided?

A I don't know of any legal help other than the fact that I personally discussed with Judge Hastings and myself that we were trying to get persons of reputation and some influence around the country to prepare him, whenever his parole was terminated, to get him readmitted to the Bar. And not knowing when his parole would be terminated, on many occasions there are special petitions that can be filed before State Supreme Courts as were done in the urban case here, and is the reason how we got a black lawyer who was not admitted into the University of Florida on that same petition even though because the Supreme

Stewart - cross

Court of the State has special powers to admit to the Bar.

Q You are familiar with South Carolina law?

A I am not familiar with South Carolina law. I don't have any reason to believe that it would be any different from Florida law.

Q What does Mr. Pride's parole have to do with South Carolina law?

A It has to do with, from what I gather, that a part of his sentences was that he would not be eligible to practice law until his parole was terminated.

Q Where did you learn that?

A Through--I don't know whether it was Borders, Hemphill, Judge Hastings. George Allen, who is Judge Hastings' former law partner, is also a good friend of Hemphill Pride who he lived with and who he provided assistance with, and who we constantly engaged in conversation with, who is a former president of the National Association and my wife has been treasurer for ten years.

So there is constant interaction between all of these parties. Now, where I specifically got it from, you know, I didn't record it. That is how

Stewart - cross

I gained the knowledge.

Q Are you familiar with the fact that Mr. Pride asked Judge Hastings, while he was in prison, to solicit moneys for him to assist him in his appeal?

A I don't have personal knowledge of that fact. I know that Judge Hastings and George Allen have asked me for moneys in Mr. Pride's instance.

Mr. Weingarten, in all honesty I have tried to assist many lawyers but then sometimes your own personal financial obligations deter you from doing this. But I have been asked by both Judge Hastings, by Bill Borders and by George Allen to assist financially and to ask lawyers in my area to assist financially.

Stewart - cross

BY MR. WEINGARTEN:

Q Putting aside your particular role, in your network of communications, did you learn that while Hempy Pride was in prison that he asked Judge Hastings specifically to go out and solicit moneys on his behalf so that his appeal could be drafted properly?

A I don't know personally that that occurred.

Q Well, had you heard in your network of communications that Judge Hastings said, no, it would be improper for a Federal Judge to do that?

A I have no personal knowledge of the fact that moneys were being raised for the appeal. I know that I had been asked for moneys for Mr. Pride. Now, what the specific purposes--sometimes it was for the caring of his family and sometimes it was for the legal expenses. But I cannot specifically say that at any time that I have personal knowledge of the fact that Judge Hastings told him that it would be improper I don't have knowledge of that.

Q You have never heard that?

A No, I haven't.

MR. WEINGARTEN: All right. No further questions.

Stewart - redirect

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. WILLIAMS:

Q Mr. Stewart, when did you think Hemphill Pride would be able to regain his license?

A I do believe the law--

MR. WEINGARTEN: Excuse me. I respectfully object. I see no relevance to that.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q When Judge Hastings solicited you to provide financial assistance to Hempy, were you under the impression that at that time Hempy could have his license restored?

MR. WEINGARTEN: Excuse me. Same objection.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q Did you have any reason to believe that Hemphill Pride could not have his license to be restored?

MR. WEINGARTEN: Same objection, your Honor.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q Did you have discussion with Hemphill Pride regarding when it was his license would be restored?

A I did not personally discuss it with Mr. Pride.

Q Okay.

MS. WILLIAMS: I have no further questions.

THE COURT: Recross?

MR. WEINGARTEN: No, your Honor.

THE COURT: Mr. Stewart, before you leave, could you spell your first name, sir?

THE WITNESS: D-e-l-a-n-o.

THE COURT: And Stewart is--

THE WITNESS: S-t-e-w-a-r-t.

THE COURT: Thank you, sir. You may step down and, there being no request for you to remain, you may either remain in the courtroom or leave, if you so desire.

THE WITNESS: Thank you very much, sir.

[Witness excused.]

MS. WILLIAMS: Warren Dawson.

Mr. ANDERSON. The sixth witness we offer through prior testimony is the testimony of Herman Perry. Mr. Perry is a life-long friend of Hemphill Pride. He testified at the 1983 trial about his conversations with Mr. Pride concerning readmission to the bar and his desire, the intensity of that desire. The matter bears upon the extent to which it was common knowledge that Mr. Pride was in 1981 in fact seeking readmission to the bar. We offer it here as it was offered at Judge Hastings' 1983 trial for that purpose.

The CHAIRMAN. Again, it is testimony we have already ruled on in Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF HERMAN C. PERRY, JR. IN *UNITED STATES v. HASTINGS*

16 THE COURT: And, ladies and gentlemen,
17 another witness will be called at this time.
18 JUDGE HASTINGS: May it please the Court,
19 your Honor, we would like to call Herman Perry.
20 Thereupon--
21 HERMAN C. PERRY, JR.
22 was called as a witness by the defendant and, having
23 been first duly sworn, was examined and testified as
24 follows:
25 THE CLERK: Would you state your name,

Perry - direct

please, and then spell your last name.

THE WITNESS: Herman C. Perry, Jr., P-e-r-r-y.

DIRECT EXAMINATION

BY JUDGE HASTINGS:

Q Please, sir, tell us where you live, Mr. Perry?

A Columbia, South Carolina.

Q And how long have you been a resident of Columbia, South Carolina?

A All my life.

Q And do you know me, Mr. Perry?

A Yes, I do.

Q Do you know Hemphill Pride?

A Yes, I do.

Q How long have you known--

THE COURT: Excuse me just a moment. Would you bring the microphone toward you and speak into it, sir.

BY JUDGE HASTINGS:

Q Before I ask how long that you have known Mr. Pride, Mr. Perry, are you presently employed, sir?

A I am self-employed, yes.

Q And what line of work do you participate in?

A I am in the janitorial business.

Q Have you been in other businesses?

Perry - direct

THE COURT: I'm sorry, what?

THE WITNESS: I am in the janitorial business.

BY JUDGE HASTINGS:

Q Have you been in other businesses in the recent past?

A Yes, I have.

Q All right. Do your parents live in South Carolina?

A Yes, they do.

Q All right, and are they in business?

A I'm sorry.

Q Are they in business?

A Yes, they are.

Q And what line of work are your parents in?

A In the clothing business.

Q And how long have they been in that business?

A Many, many years, 40 years.

Q Mr. Perry, have you ever worked in that business?

A Say again, please?

Q Have you ever worked in your parents'

business?

A Yes, I have.

Q All right. Now, how long have you known Hemphill Pride?

A Forty-some years.

Q Forty-some years?

A Yes, sir.

Q And where did you first get to know him?

A As a child. We grew up together.

Q How far was your house from Hemphill's house?

A Approximately eight blocks.

Q So you lived on Oak Street, too?

A No, I lived on Pine.

Q Okay. Another tree?

A Right.

Q All right. But close by?

A Very close by.

Q Mr. Perry, did there come a time-- Are you familiar with the fact that Hemphill Pride was incarcerated at Maxwell Prison in Montgomery, Alabama?

A Yes.

Q Do you know why he went to prison there?

A Yes, I do.

Perry - direct

Q And tell the jury, if you can, what your recollection of the events are leading up to his going to prison.

A My recollection of those events are related to a trial in Columbia, South Carolina, which was involved with a HUD project in which Hemphill and subsequently apparently there were co-mingling of funds, I think, which brought about that trial.

Q All right. Now, when Mr. Pride was at Maxwell Prison, did he call you from the prison?

A Yes, he did.

Q How frequently would you say?

A On many occasions, Sunday evenings, whenever, I guess, they were allowed to call.

Q In the year 1980, did there come a time when he made a specific request of you to pick him up at the present?

A Yes, he did.

Q And was that pursuant to a special furlough that he may have had at that time?

A Yes, that is correct.

Q And you then picked him up. Tell us the manner in which you picked him up. Was it by car or airplane or what?

Perry - direct

A It was by car.

Q You drove to Montgomery from Columbia?

A From Columbia, South Carolina, that's right.

Q Turned around and drove from Montgomery back to Columbia?

A That is correct.

Q On the way back to Columbia or before that time, were you made aware of why Mr. Pride wanted to go to Columbia?

A Yes, he stated to me that he was coming to Columbia to talk with someone. He did not name the individual.

Q Did he name the profession of the individual?

A Yes, he said that they were in the legal profession, whether it was an attorney or a judge or his counsel or whatever--

Q And what was he going to talk with the person or persons that he was coming to town to see?

A He stated to me that he was coming to see about his license.

Q That was while he was in prison?

A That is correct.

Perry - direct

Q All right. Now, after he got out of prison, and I believe the date has been established that he got out of prison on March 9, 1981, did he return to Columbia, South Carolina?

A Yes, he did.

Q How soon, Mr. Perry, after Mr. Pride arrived back in Columbia, did you see him, sir?

A In fact, I saw him the same day on which he arrived in Columbia.

Q Did you have a conversation with him about his practicing law?

A Yes.

Q Tell us what you talked about?

A Well, Hemp stated to me that he was going to receive his license back and one thing and another like that, and he was pursuing that.

At one point in time during that conversation, I had just opened another office and I knew that Hemp had some furniture and stuff, and I said to Hemp, "Well, do you want to sell the furniture? Do you want to lease it?" Or whatever, you know, and he stated to me again, no, he was going to hold on to it because he was expecting he was going back into practice.

Perry - direct

Q That he was going back into practice?

A Right.

Q Mr. Perry, are you aware that at some time the South Carolina Supreme Court issued an order in which it was recited that Mr. Pride was indefinitely suspended?

A No.

Q You're not aware of that?

A I am not aware of that.

Q How soon after Mr. Pride began his efforts as you perceive them did you think it was--you, yourself--think it was that he could have his licenses restored?

MR. WEINGARTEN: Excuse me. I respectfully object. Relevance.

THE COURT: Sustained.

BY JUDGE HASTINGS:

Q All right. Do you have an independent recollection of the number of times Mr. Pride told you personally different things about the restoration of his licenses?

A Yeah, it's common conversation.

Q You would say it is a fair characterization that he was consumed by that notion of practicing

law?

A Yes.

MR. WEINGARTEN: Excuse me. I respectfully object. It's a leading question.

THE COURT: One moment. Sustained. The objection is sustained. Counsel will refrain from leading. The answer will be stricken and disregarded by you, ladies and gentlemen.

BY JUDGE HASTINGS:

Q Mr. Perry, did you know exactly when Hemphill Pride was going to practice law again, you?

A Did I know when he was going to practice law again?

Q Yes, sir.

A No more than what he said to me, that he was going to get his license.

Q Did you feel he told you the truth about the restoration of his licenses?

MR. WEINGARTEN: Excuse me. I'm going to respectfully object.

THE COURT: Leading?

MR. WEINGARTEN: Leading and irrelevant.

THE COURT: The objection to the form of the question is sustained. The answer, if one was

Perry - direct

made, will be stricken.

JUDGE HASTINGS: Thank you very much.

THE COURT: Mr. Weingarten, when you stand, would you speak a little louder, please. If I happen to be looking at you, I see you, but if I am not looking, I can't hear you.

MR. WEINGARTEN: I apologize, Your Honor.

THE COURT: Is that it?

JUDGE HASTINGS: Yes. Well, perhaps just so it is clear.

BY JUDGE HASTINGS:

Q You did talk with him a lot about the restoration of his license?

A Yes, I did.

JUDGE HASTINGS: Thank you.

THE COURT: Cross examination?

MR. WEINGARTEN: Thank you, Your Honor.

1 Perry - cross

2 CROSS EXAMINATION

3 BY MR. WEINGARTEN:

4 Q Mr. Perry, my name is Reid Weingarten.

5 I am one of the Government attorneys in the case.

6 Just to make it clear, you are not a

7 lawyer, are you, sir?

8 A No, I am not.

9 Q And you are not familiar with laws and

10 statutes and that sort of thing, are you?

11 A No, not particularly.

12 Q All right. Do you know, however, why it

13 was exactly that Hemphill Pride wanted to go back to

14 South Carolina from prison and discuss his situation

15 when you picked him up; do you know the reason?

16 A I know what he told me.

17 Q And what did he tell you?

18 A He told me that he was going back to

19 discuss his license.

20 Q Were you aware of the fact that in May

21 of 1980 there was actually a hearing in South Carolina

22 concerning his license?

23 A No.

24 Q You are not familiar with that? Where

25 witnesses testified and testimony was taken concerning

Perry - cross

Hempy Pride?

A No, I am not aware of that.

Q Was that the reason he was going back, to prepare for that hearing?

A I don't know that, sir. He only stated to me that he was going back to see his license.

Q Well, he was in prison at the time, is that right?

A That is correct.

Q And this is before the Supreme Court indefinitely suspended him?

A If you say so, I would have to--

Q In other words, you don't know the chronology, is that right?

A I don't know the chronology of that, no.

MR. WEINGARTEN: All right, thank you, sir. There is no further question.

THE COURT: Redirect?

JUDGE HASTINGS: No redirect, Your Honor.

THE COURT: Thank you, Mr. Perry. You may step down and you may even leave at this time or remain if you wish to in the courtroom.

THE WITNESS: Thank you.

[Witness excused.]

JUDGE HASTINGS: Judge, we don't have a ten-minute recess and with all due respect, and we would respectfully urge the Court that we take our recess at this time.

Our witnesses at this point are coming from out of the city, and I think there's going to be--

THE COURT: No problem at all.

Ladies and gentlemen, we will recess for lunch at this time for an hour and fifteen minutes. It will be until approximately ten minutes of 2:00 if my arithmetic is correct.

I do remind you not to discuss the case during these recesses and your lunch should be either in the jury room or coming in very shortly.

Court will recess then until ten minutes of 2:00.

[At 12:35, P.M., a luncheon recess was taken.]

Mr. ANDERSON. The seventh witness we offer through prior testimony concerns the same matter, that is, the testimony of Ralph Stevenson, of Columbia, South Carolina, or at least then of Columbia, South Carolina. He testified at Judge Hastings' trial, he identified himself as a life-long friend of Hemphill Pride. Again, he testified concerning Mr. Pride's desire to regain admission and was able to bring out, he testified concerning efforts Mr. Pride made even while he was still incarcerated in prison. We offer his testimony as it bears upon that aspect.

The CHAIRMAN. It will be admitted.

PRIOR TESTIMONY OF RALPH STEVENSON IN *UNITED STATES v. HASTINGS*

19 RALPH STEVENSON

20 was called as a witness by the Defendant and, having

21 been first duly sworn, was examined and testified as

22 follows:

23 THE CLERK: Would you state your name,

24 please?

25 THE WITNESS: Ralph Stevenson.

Stevenson - direct

THE COURT: Mr. Stevenson, would you spell your last name, please?

THE WITNESS: S-t-e-v-e-n-s-o-n.

DIRECT EXAMINATION

BY JUDGE HASTINGS:

Q Mr. Stevenson, where do you live, sir?

A Columbia, South Carolina.

Q And how long have you lived there, sir?

A Fifty odd years.

Q Fifty. You don't look it.

Do you know Hemphill Pride?

A Yes, I do.

Q And how long have you known Mr. Pride?

A Forty odd years.

Q And would you say that you all grew up in the general area of Columbia together?

A On the same street.

Q What street was that?

A Oak Street.

Q Did you all play together as children?

A We did.

Q And throughout all of your lives, have you had different kinds of relationships with Mr. Pride, say, social, business and professional?

A I have.

Q All of those?

A All of those.

Q All right.

Tell us how at one point in time you were interrelated with Mr. Pride in business.

A At one time--

MR. WEINGARTEN: Your Honor, excuse me for one second. I would like to object and approach the Bench.

[Sidebar conference between the Court and counsel out of the hearing of the jury as follows:]

MR. WEINGARTEN: I am going to, first, lodge an objection on relevancy grounds and then ask for a proffer and perhaps the proffer can answer the objection.

JUDGE HASTINGS: All right. The relevancy is going to be or the proffer if Mr. Stevenson is allowed to testify, he will testify that he has known Hemphill Pride long enough to observe him with reference to detail having to do with his memory process and, in addition to that, mine and his relationship and Mr. Stevenson's relationship to the extent

Stevenson - direct

that Mr. Pride sought the help of others. He sought my advice and Mr. Stevenson can testify as to those matters.

In addition to that that Mr. Pride was about the business of trying to have his licenses restored to practice law in Columbia, South Carolina. Mr. Stevenson has personal knowledge of these matters.

MR. WEINGARTEN: Okay.

THE COURT: All right. No objection.

[Sidebar conference concluded and the following proceedings were had in open court:]

Stevenson - direct

JUDGE HASTINGS: May it please the Court?

THE COURT: There has been no objection and counsel may proceed.

BY JUDGE HASTINGS:

Q Mr. Stevenson, you were about to tell us about your business relationship and I would just ask if you do so briefly, please?

A Yes. At one time, as a real estate broker I worked for his mother, for he and his mother. They own a real estate company and I operated that company for a period of time.

Q Do you know me personally, Mr. Stevenson?

A Yes, I do.

Q How long, sir, have you known me?

A Approximately 12 years.

Q How did you meet me, sir?

A Through Mr. Pride.

Q In your interrelationships with Mr. Pride have you had an occasion to come to know whether or not he sought advice from me?

A Yes.

Q How would you characterize that, sir?

A That on many occasions he did seek advice on various things, personal and also pertaining

Stevenson - direct

to the law from you.

Q All right, sir.

A Over the years.

Q Mr. Stevenson, have you discussed with Mr. Pride, from the day of his conviction until as many as say five or six weeks ago, his seeking out an opportunity to practice law again in Columbia, South Carolina?

A Yes, I have.

Q Tell us what if anything you have discussed with Mr. Pride?

A The fac. that he, his ultimate objective was to get his license to practice again at some future date.

Q And when would he say that the process began?

A As soon as he was released from prison.

Q And has it been continuous?

A Yes.

Q Would you say there is, as a fair characterization, that Mr. Pride is consumed with the notion of practicing law again in Columbia, South Carolina?

A Most definitely.

Stevenson - direct

Q Is that his, in the vernacular, all-day study and midnight prayer?

A No question.

Q Whe is the last time that you spoke with him about practicing law in Columbia?

A Four to six weeks ago.

Q Do you have any personal knowledge of what efforts, if any, he is making to do that at this time?

A Yes.

Q Would you tell us about that?

A He has attempted to secure a building or a house that he intends to refurbish into a law office.

Q And did he tell you that?

A He did tell me that.

Q Mr. Stevenson, when Mr. Pride got out of prison, Maxwell-- I believe it's been established that that was in March of 1981-- Did you come to know, sir, that he began then making efforts to have his licenses restored?

A Yes. He did tell me that he had retained an attorney to assist him.

Q All right. Did you know about his indefinite suspension?

Stevenson - direct

A I knew that his license had been suspended indefinitely but he thought that he would get them back at some time, some future time.

Q All right. And that time was different times as you spoke with him?

A Yes.

Q All right. Mr. Stevenson, have you helped Hemphill Pride in any unsolicited fashion?

A Yes, definitely.

Q More times than once?

A More times than once.

JUDGE HASTINGS: Your witness.

THE COURT: Cross examine.

MR. WEINGARTEN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WEINGARTEN

Q Mr. Stevenson, my name is Reid Weingarten. I am the Government attorney in this case.

Sir, is it fair to characterize you as the close friend of Mr. Pride?

A Yes.

Q And you pretty much are aware of his little difficulties and what he has done since? Is that fair to say?

Stevenson - cross

A Yes.

Q I mean you have discussed these things with him?

A Yes, with him-- You are talking about his little difficulties during his practice, going to prison--

Q Yes.

A Yes, I was with him constantly.

Q Then, would you know that once he was convicted and sent to prison, while he was in prison he sought to appeal his conviction on certain legal grounds? Were you aware of that?

A Yes.

Q And were you aware, also, that in the summer of 1980, when he was in prison, he wrote to Alcee Hastings asking Alcee Hastings to solicit money on his behalf so that he could file his appeal? Do you know that?

A I did not know that.

Q Did you know as well that at that time Alcee Hastings refused, saying that it would be improper for a Federal Judge to solicit money. Do you have knowledge of that, sir?

A I have no knowledge of that.

Stevenson - cross

Q Now, you mentioned the fact that once Hempy was out of prison he sought the advice for the counsel of an attorney, vis-a-vis his situation with the South Carolina Bar. Is that right?

A That's correct.

Q Do you know that two and a half months, or almost three months after he was released from prison the Supreme Court came down with a very important decision concerning Mr. Pride?

A I am aware of that.

Q And the Supreme Court had a choice to make, either they could disbar him forever or they could indefinitely suspend him. Is that right?

A I was of the opinion that the Supreme Court said that to disbar him was too harsh a sentence for the crime that he was supposed to have committed.

Q Exactly. So, they indefinitely suspended him. They didn't disbar him?

A Right.

Q They indefinitely suspended him?

A Uh-huh.

Q And as a close friend of Mr. Pride, are you aware of the fact that under South Carolina law Mr. Pride was not eligible to apply for reinstatement

Stevenson - cross

for two years?

A No, I didn't know that. I didn't know what the period of time was.

Q Well, a period of time had to elapse before he was eligible. Is that right?

And to your knowledge has Mr. Pride attempted, or has he applied for reinstatement as of this date?

A Mr. Pride told me that he had hired an attorney to assist him in getting his license back and he thought that he probably would get them back early 1973.

Q Well, that is because the two years had to elapse. Is that correct?

A I am not sure about the--

Q All right.

A --period of time.

Q Is it fair to say to your knowledge, Mr. Pride, to this date, has not formally applied for reinstatement?

A I don't know that, sir.

Q You don't know? Okay.

THE COURT: Is that it?

JUDGE HASTINGS: No, sir. Just very

Stevenson - redirect

briefly, Your Honor.

THE COURT: All right. Does that finish the cross?

MR. WEINGARTEN: Yes, I am sorry, Your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

JUDGE HASTINGS: May it please the Court?

BY JUDGE HASTINGS:

Q Mr. Stevenson, do you have an opinion with reference to when Mr. Pride would get his licenses back based on what he told you when he got out of prison?

MR. WEINGARTEN: Excuse me, I am going to respectfully object.

THE COURT: Sustained.

BY JUDGE HASTINGS:

Q Mr. Stevenson, did Mr. Pride tell you more than one thing about when he would get his licenses back?

A Yes, he did.

Q Thank you, sir.

JUDGE HASTINGS: Nothing further.

THE COURT: Recross?

MR. WEINGARTEN: Yes, just briefly.

RECROSS EXAMINATION

BY MR. WEINGARTEN:

Q When Mr. Pride was released from prison the Supreme Court hadn't come down with its decision, yet. Is that right?

JUDGE HASTINGS: Your Honor, I object. That is outside the scope of redirect.

MR. WEINGARTEN: I don't think it is. I think it concerns what Mr. Pride may have said.

JUDGE HASTINGS: Your Honor, if we can approach the Bench without the jury speech.

THE COURT: The objection is overruled.

BY MR. WEINGARTEN:

Q Did you understand the question, Mr. Stevenson?

A No. Would you repeat it, please?

Q Sure. Is it fair to say that the Supreme Court decision which indefinitely suspended Mr. Pride came after he was released from prison?

A I think so.

Q So, Mr. Pride may have had certain ideas about when he would practice law once he was released and other ideas once the Supreme Court decision

Stevenson - recross

came down. Is that a fair statement?

A No. I don't think so. I am not so sure that Mr. Pride knew when he could practice law again. Mr. Pride, from day one, when he was released from prison, began to work on the fact that he one day would receive his license again. Now, what the time frame was I do not know but I know that he told me very shortly-- I talked with him very shortly after he was released and he said that he had started to work already to get his license back.

Stevenson - recross

BY MR. WEINGARTEN:

Q To your knowledge is that work culminated in an application, to this day?

JUDGE HASTINGS: Your Honor, I am going to object. This is repetitious.

MR. WEINGARTEN: I think it is totally responsive to the witness' answer.

JUDGE HASTINGS: Your Honor, I am going to object to the counsel making jury speeches.

THE COURT: Counsel is not making a jury speech. Counsel is addressing the Court on the objection and the objection is overruled.

JUDGE HASTINGS: Thank you very kindly.

THE COURT: This is recross and there will be opportunity for further redirect if the defense wishes.

THE WITNESS: Would you repeat, please?

BY MR. WEINGARTEN:

Q Just by way of clarification, sir, to your knowledge has Hemphill Pride applied for reinstatement to the Bar of South Carolina as of today?

A I don't know.

Q Okay. Thank you.

JUDGE HASTINGS: We have no more questions.

THE COURT: Further redirect?

JUDGE HASTINGS: No, sir.

THE COURT: Thank you, Mr. Stevenson. You may step down.

THE WITNESS: Thank you.

THE COURT: You may be finally excused.

JUDGE HASTINGS: Your Honor, with the Court's permission would you not intend to recall Mr. Stevenson--

THE COURT: The Court has excused him.

JUDGE HASTINGS: My point, if the Court please, can he stay in the courtroom, is what I was going to ask the Judge.

THE COURT: Any witness who has testified and is not going to be recalled may remain in the courtroom.

JUDGE HASTINGS: Thank you very kindly.

THE COURT: And any witness who has testified and the Court understands is finally excused, unless counsel has requested that the witness--

JUDGE HASTINGS: Yes, sir.

MS. WILLIAMS: Guy Burns.

MR. RICHTER: May we approach the Bench, Your Honor.

THE COURT: Counsel may approach the

1 Bench.

2 [Sidebar conference between the

3 Court and counsel out of the

4 hearing of the jury as follows:]

5 MR. RICHTER: It is my rough understand-

6 ing, and I emphasize rough, that he is going to

7 testify to something about him having handled cases

8 before Judge Hastings, before, and what his practice

9 is, and I would question the relevance of that whole

10 line of questioning, absent a proffer.

11 THE COURT: Ms. Williams, what is the

12 name of the witness?

13 MS. WILLIAMS: Guy Burns.

14 THE COURT: How do you spell that?

15 MS. WILLIAMS: G-u-y, B-u-r-n-s.

16 THE COURT: Yes?

17 MS. WILLIAMS: And Mr. Burns is being

18 called to talk about the accessibility--accessibility

19 to lawyers in Judge Hastings' courtroom which Your

20 Honor said is the only relevant area.

21 THE COURT: In his courtroom or chambers?

22 MS. WILLIAMS: In his office.

23 THE COURT: You mean about the fact that

24 lawyers are able to come in and out of Judge Hastings'

25 chambers?

Mr. ANDERSON. The eighth witness whose testimony we offer is offered really as an occurrence witness, that is the testimony of Mildred Pride, Judge Hastings' mother. It is a fact of some consequence in issue as to whether, on October 9th, she received a call from her son, whether or not the FBI agents did contact her at her apartment. We offer her testimony that she offered at the 1983 trial, for the purpose of establishing that she did receive a call from her son in Washington and concerning the events of that day that occurred as they developed in south Florida. This one as not by ruling, but by agreement after the fact, in light of Mrs. Hastings' condition.

The CHAIRMAN. Counsel, you intended to say there that this is Mildred Pride, Hemphill Pride's mother?

Mr. ANDERSON. I'm sorry, no, it is Mildred Hastings, Judge Alcee Hastings' mother. She resided with him and there was——

The CHAIRMAN. Is there objection to that testimony?

Mr. BARON. No, by agreement we have agreed that it can come in, in lieu of Mrs. Hastings' being called live to testify.

May I ask counsel, just so we are clear, that when you say you are offering the testimony, we are talking about the direct and the cross?

Mr. ANDERSON. We are offering the full transcript of the direct and the cross that took place at the 1983 trial.

The CHAIRMAN. It will be admitted.

PRIOR TESTIMONY OF MILDRED HASTINGS IN *UNITED STATES v. HASTINGS*

5th 748

1 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA

2 No. 81-596-Cr-ETG

3

4 UNITED STATES OF AMERICA,)
)
5 Plaintiff,)
)
6 vs.) VOLUME 5
)
7 ALCEE L. HASTINGS,)
)
8 Defendant.)
)
9 - - - - - - - - - - - - - - - x

10

11 United States Courthouse
300 Northrast 1st Avenue
12 Miami, Florida
Monday, January 24, 1983
13 9:32 a.m.

14

15

The above-entitled cause came on for further
16 trial before the Honorable EDWARD T. GIGNOUX, Chief
17 United States District Judge, District of Maine, and a
18 jury, at the time and place aforesaid, pursuant to
19 adjournment taken on January 22, 1983.

20

21 APPEARANCES:

22 SAME AS HERETOFORE NOTED.

23

24 - - - - -

25

1 THE COURT: Good morning, ladies and
2 gentlemen, and good morning, counsel.
3 [Replies of "Good morning, your
4 Honor."]
5 THE COURT: And hopefully you had a
6 pleasant weekend.
7 You were pleased with the result of the
8 game, I'm sure of that. And did you go to the circus?
9 THE FORELADY: Yes, we did.
10 THE COURT: And that was fun, too?
11 THE FORELADY: Yes.
12 THE COURT: You saw some of your families?
13 THE FORELADY: Yes.
14 THE COURT: Well, I apologize for the
15 weather, but I'm glad to see our New England weather
16 has returned today.
17 We will continue this morning until
18 quarter of 1:00 again with a fifteen minute recess at
19 11:00 o'clock.
20 As you were informed Saturday, the
21 Government has rested its direct case and the time has
22 come when the defendant will be presenting his evidence.
23 If the defense is ready, we may proceed.
24 MS. WILLIAMS: Yes, your Honor.
25 Mildred Hastings.

Hastings - direct

Thereupon--

MILDRED HASTINGS

was called as a witness by the Defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: And would you state your name, please?

THE WITNESS: My name is Mildred Hastings.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Good morning, Mrs. Hastings.

A Good morning.

Q What is your relationship to Alcee Hastings?

A He's my son.

Q And where do you live?

A I live in Lauderhill, Florida.

Q And with whom do you live?

A I live with my son. We share the same apartment.

THE COURT: I am apprehensive the jury cannot hear you, Mrs. Hastings.

Could we pull the microphone up closer? And speak as loudly as you can, please.

1 Hastings - direct

2 THE WITNESS: I will do the best I can.

3 Is that better?

4 MS. WILLIAMS: That is better. That's

5 better.

6 BY MS. WILLIAMS:

7 Q You said you live in Lauderhill with

8 your son?

9 A Yes, I do.

10 Q And how long have you lived there?

11 A Almost seven years.

12 Q All right.

13 Now, are you very familiar with the Fort

14 Lauderdale area?

15 A No, I am not.

16 Q Why is that?

17 A Because when I first moved here, I could

18 walk some but that gradually got worse, and my knees

19 did, so I just never got around in Fort Lauderdale, so

20 I don't know Fort Lauderdale at all.

21 Q Are you confined to the house?

22 A Yes, I am.

23 Q All right.

24 Who takes care of all of your needs out-

25 side of the house?

Hastings - direct

A My son.

Q All of them?

A All of my personal needs, my house shopping, all things like that, he does.

Q All right.

Inside the house, are you self-reliant?

A Oh, yes, I am self-reliant in the house. Once my needs are brought into the house, I can take care of myself.

Q Now, before you lived in Fort Lauderdale, where did you live?

A I lived in Altamonte Springs, Florida, where I was born. My mother was born there; my father was born there; and they died there. Alcee was born there, also.

Q Okay.

Do you work, Mrs. Hastings?

A No, not now.

Q And when is the last time you worked?

A Since 1970.

Q And when you did work, what did you do?

A I worked with my husband as cook-housekeeper, and my husband was a chauffeur-butler.

Q Now, you said that inside the house you

Hastings - direct

are self-reliant more or less.

A Yes, I am.

Q Do you prepare meals?

A Mainly for myself. Al does eat at home, but I prepare some meals for him, but most times when he is going to eat home, we both like Chinese food or something like that, so he brings food in.

That's like me going out for dinner when he brings food in.

Hastings - direct

BY MS. WILLIAMS:

Q Now, is your son away from the house a lot?

A Yes, he is away from the house a lot.

Q When he is away do you know how to reach him, generally?

A Oh, at all times.

Q Why is that?

A Well, because being a judge, he says to me, it is a demanding job and like when he's a duty judge he has to be in place 24 hours a day, and also he knows that I have a physical problems so he wants me to be always able to reach him.

Q So it is safe to say that you always know how to reach him?

A Oh, always.

Q And that he is in contact with you wherever he is?

A Yes, he is.

Q Does he travel a lot?

A Yes, but he will even call from out of town and say whether he's going to be home, tell me when to expect him or when not to expect him.

Q Now, Mrs. Hastings, I'd like to discuss

1. Hastings - direct

2 for a few moments the weekend of September the 11th.

3 All right?

4 Now, do you know or do you remember if

5 Al traveled on that weekend?

6 A Yes, he did.

7 Q Where did he go?

8 A He went to Washington, D.C. and to

9 Harrisburg, Pennsylvania to a Juvenile Officers

10 Association.

11 Q All right. He discussed that with you?

12 A Yes, he did.

13 Q How far in advance did you know that he

14 was going to be going to Harrisburg, Pennsylvania and

15 Washington, D.C.?

16 A Oh, I knew about Harrisburg like months

17 before. He was proud of that speaking engagement up

18 there and I was proud for him because it was out of

19 state, not in Florida like most times. It was a new

20 state for him.

21 Q What about Washington, D.C.?

22 A I didn't know about that, but I did know

23 that Jesse was to meet him there but I don't know when

24 that was planned.

25 Q And who was Jesse?

Hastings - direct

A Jesse is Jesse McCrary, an attorney.

Q All right. Now, do you know for a fact whether he went to D.C. and Harrisburg?

A Yes, I do.

Q How do you know?

A Because he brought-- I keep a scrapbook on Al and he brought back literature, a book and golf cap and program from the Pennsylvania Juvenile Officers' Association.

Q All right. Do you know of any other travel that Al undertood in the month of September?

THE COURT: You are speaking 1981?

Q 1981?

A 1981, yes. He went-- He spoke in Orlando at a fraternity there. Then he went to the University of Florida and spoke there at a fund raising something for Zora Neale Hurston.

Q Do you recall whether this was before or after the Harrisburg trip?

A That was right after the Harrisburg trip.

Q Do you recall any other travel in September, 1981?

A No, I don't.

1 Hastings - direct

2 Q All right, let's move to September 16,

3 1981. Do you know if Al had dinner out?

4 A I know now that he had dinner out but I

5 didn't know when he was having dinner that date that

6 he was with Essie Thompson. I did not know that, but

7 because of this situation I know he had dinner at the

8 Fontainebleau.

9 Q Okay.

10 A But I do know that when he have dinners

11 out like that, and it is a judges' meeting, he eats

12 home a late night snack or either he eats out.

13 Q Are you saying there was a judges' meeting

14 on September 16?

15 A Yes.

16 Q You recall that?

17 A Yes, I do.

18 Q All right. Did Al tell you that Bill

19 Borders was coming to Miami on September 16?

20 MR. WEINGARTEN: Excuse me. I am going

21 to object: hearsay.

22 THE COURT: Did you wish to be heard?

23 MS. WILLIAMS: Party admission. I am

24 asking her whether or not a party to this case--

25 THE COURT: The objection is sustained.

1 Hastings - direct

2 BY MS. WILLIAMS:

3 Q Do you know if Bill Borders came to

4 Miami on September 16, 1981, Mrs. Hastings?

5 A I don't know.

6 Q Do you know if he was expected?

7 MR. WEINGARTEN: Excuse me. I am going

8 to object.

9 A Yes, I do. He was expected--

10 MR. WEINGARTEN: Your Honor, I am going

11 to object again. Same objection: hearsay.

12 THE COURT: The objection is sustained.

13 The answer will be stricken, ladies and gentlemen,

14 and disregarded by you.

15 BY MS. WILLIAMS:

16 Q All right, Mrs. Hastings, were you at

17 home the weekend of October 4th, 1981?

18 A Yes, I was.

19 Q Do you know, was Al home that weekend?

20 A No, he wasn't.

21 Q Where was he?

22 A He was at--on Key Biscayne, at the

23 Sonesta Beach Hotel.

24 Q For what purpose?

25 A For an NBA meeting.

Hastings - direct

Q For what kind of meeting?

A NBA, National Bar Association meeting.

Q While he was away that weekend did you take a telephone message for him from Bill Borders?

A Yes, I did.

Q And when was that?

A That was on a Sunday afternoon.

Q And what was the message?

MR. WEINGARTEN: Excuse me, Your Honor. I am going to object.

THE COURT: Basis?

MR. WEINGARTEN: Hearsay, Borders.

THE COURT: It is offered for the truth? The objection is sustained.

MS. WILLIAMS: Your Honor, it is not offered for the truth.

MR. WEINGARTEN: Perhaps we should approach the Bench.

THE COURT: Counsel may approach the Bench.

(Sidebar conference between the Court and counsel out of the hearing of the jury as follows:)

MS. WILLIAMS: Your Honor, it is not

offered for the truth of the statement.

THE COURT: What is the message?

MS. WILLIAMS: The message was related to Alcee Hastings and it is to state of mind, Your Honor.

THE COURT: What was the message? What will she testify?

MS. WILLIAMS: The message was that Bill Borders had called regarding something about Hempy. That is all she remembers, and Mrs. Hastings told Judge Hastings about that message and that affected-- caused him to do certain things. It is just like, Your Honor, Shorter called and told--

THE COURT: Wait a minute, just a moment.

MS. WILLIAMS: Yes.

THE COURT: I am not clear. You are saying she is testifying that Borders called on Sunday of that week? Right?

MS. WILLIAMS: Yes.

THE COURT: And you will ask her what the message was. What was the message?

MS. WILLIAMS: The message was Bill Borders had called and asked to call him regarding Hempy.

Hastings - direct

THE COURT: Was that the message-- Did she take the message, herself?

JUDGE HASTINGS: Sure.

MS. WILLIAMS: She took the message.

THE COURT: She talked to Borders?

MS. WILLIAMS: Yes.

THE COURT: That is not hearsay.

MR. WEINGARTEN: We certainly think it is hearsay. It is the truthfulness of Borders' statement that is relevant.

JUDGE HASTINGS: Oh, no.

MS. WILLIAMS: No, it is not.

THE COURT: One at a time. If the message is what you say it was, "Mr. Borders asked me to ask Judge Hastings to call him?" Is that it?

MS. WILLIAMS: Regarding Hempy.

THE COURT: Regarding. That is not hearsay.

JUDGE HASTINGS: Thank you, Your Honor.

THE COURT: It will be overruled.

(Sidebar conference concluded and the following proceedings were had in open court:)

THE COURT: Apparently there is talking

Hastings - direct

among the spectators in the courtroom. It is bothering the jury. That will stop and the Marshals are instructed that anybody that is talking in the courtroom, that person is to be removed from the courtroom.

BY MS. WILLIAMS:

Q All right, Mrs. Hastings, would you tell us what the message from Bill Borders was on October 4th?

A It was to call him.

Q To call him regarding what?

A I don't know-- I don't remember what it was regarding.

Q Did Borders mention anybody's name?

A Borders wanted Al to call.

Q To call him?

A It was something concerning him.

Q Something concerning him?

A Yes.

Q Oh, I see. All right.

Do you know Bill Borders, Mrs. Hastings?

A Yes, I know Bill Borders.

Q Prior to October 4th, 1981, had he called your home before?

A Yes, he had.

Hastings - direct.

Q On what occasions; for what purposes?

A Oh, he called many times. He called me on my birthday and on Mother's Day.

Q You had met him before?

A Yes. I met him in Washington.

Q When did you meet him?

A I met him in Washington and--

Q How long ago?

A Al was the State's--Circuit Court Judge and I met him there at a restaurant in Washington. He was with Hemphill Pride when I met him.

Q Okay. Every time Borders, when Borders calls for Al and Al is not there do you always deliver the message?

A Not always.

Q Why is that, Mrs. Hastings?

A Well, Borders seemed to be overbearing at times, and--

Q Would he--

A --he was-- He just demanded. When he'd come in town he'd want Al to call and ask for Al to take him somewhere and I figured that he could get a taxi. So sometimes I wouldn't even tell him if he called.

Hastings - direct

Q That he called? Now, how long ago was it that you said you met Bill Borders back in Washington, D.C.? Has it been-- How long has it been?

A I think it would be like in 1976 or '7.

Q In 1976 or '7?

A Yes.

Q And since that time have you had any number of phone conversations with him?

A Yes.

Q Would you characterize for us his manner, his phone manner?

A His phone manner?

Q Yes.

A Well, his phone manner was just nothing because when he called he calls as if you should do the talking. I mean when he calls he announces that he is Bill Borders and Bill Borders is on the phone and you just start to talk.

Q He doesn't say anything?

A Mumbles, very little. You sometimes lose him.

BY MS. WILLIAMS:

Q All right.

What about his personality? How would you characterize his personality?

MR. WEINGARTEN: Excuse me, your Honor. I'm going to object to this on relevancy grounds.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q You said that you felt that Bill Borders was pestering and that he called and always wanted Al to pick him up some-place?

A Yes.

Q Did Al get calls from other people along those lines?

A Oh, yes, all of the time.

Q And did he respond to those kinds of calls?

A Yes. Al gives a lot of his energy and time to people. More so than I think they give to him.

Q All right.

Do you know of any instances wherein people have requested that Al meet them some place?

A Oh, yes. That's all of the time because, you see, when Al is away from his office, I am sort of

1 Hastings - direct

2 like an information place for people to call when there

3 are things not concerning his job, and he makes a lot

4 of speeches and people call there and I take plenty of

5 messages like that.

6 Q Do you know Hemphill Pride, Mrs. Hastings?

7 A Oh, yes, I know Hemphill.

8 Q How long have you known Hemphill?

9 A Since 1963.

10 Q Is there a relationship between your son

11 and Hemphill?

12 A Yes. They are very close.

13 Q And what do you call Hemphill?

14 A I call him Hemp or I call him Hempy.

15 Q Okay.

16 And how long have you known him?

17 A I have known him since 1963.

18 Q Okay.

19 Now, how well would you say you know

20 Hempy?

21 A I know Hempy real well.

22 Q And how did you come to know him so well?

23 A Well, he had visited my home in Florida

24 and in California.

25 Q Have you communicated with him by tele-

Hastings - direct

phone?

A Yes, by phone; in person. I have communicated--we have all been friends since '63.

Q And about how frequently do you communicate with him?

A Quite often.

Q Okay.

You know, Mrs. Hastings, that Hemphill went to prison?

A Yes.

Q Did he communicate with you while he was in prison?

A Oh, yes, he communicated with me then. He would write then. He wrote a couple of letters, maybe there were two or three letters, and he would write me.

Q All right.

What about after he got out of prison, did he continue to communicate with you?

A No, he didn't. He wrote once.

Q When he calls-- Did he call prior to October 9th-- From the time that he got out of prison and up until October 9th, did he call?

A Yes. And he called collect.

Q When he called, with whom did he want to speak?

A He would speak to either one of us.

Q Okay.

A He would speak to me or he would speak with my son, speak with Al.

Q Have any members of his family stayed in your home with you?

A Yes.

Q Who?

A His mother and his daughter.

Q When was that?

A Well, they was having--I think there was a NBA meeting at the Diplomat Hotel in Hollywood, and Hempy was going to bring his mother and his girl friend and so Al thought it would be good for him if he did because he wanted to appeal to the meeting for financial aid and Al thought it would be good if he come down and it would lift his spirits to bring his mother down, so Al sent him three tickets to bring his mother and his girl friend and himself.

Q Now, why do you remember this situation so well?

A Because I was planning a trip myself, and

I just decided that it wouldn't be the right thing to do at that time because of the three plane tickets. I just cancelled my trip.

Q Okay. All right.

Did Al tell you why he felt he needed to provide these tickets for these people to come down?

MR. WEINGARTEN: I respectfully object, your Honor. That's hearsay.

THE WITNESS: Yes.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q All right.

While Mrs. Pride was here on that occasion, you said she stayed with you?

A Yes, she did. She cried all the while she was there.

Well, Hempy went off and didn't even call her back, didn't call her one time, and Al paid for his room at the hotel over there at the Diplomat, and he left the room vacant and moved into a suite with Bill Borders.

Q So Al paid for an empty room?

A He paid for an empty room.

Q Can you think of other times when Al

aided Hempy financially?

A When he was in prison, Al helped his mother, not on a regular basis, but he helped her quite often financially.

Q Okay.

Do you know whether or not he visited Hempy while he was in prison?

A Yes, he did. Al visited Hempy when Hempy was in prison over my objection.

Q Can you think of other occasions wherein Al extended himself for Hempy?

A Yes. The people in Fort Lauderdale were having a testimonial dinner for Al and Hempy was on trial and Al went to his trial, the day of the testimonial dinner, and I didn't think he would get back in time but he made it back just in time.

Q Okay.

So based on your observations of this relationship between your son Al and Hempy over this period of time, how would you describe the relationship between them?

A Well, they are both forty-six years old and Al has always seemed like he was the [illegible] of the two, and Al was the giver and Hempy was the taker.

Hastings - direct

Q I see. Now--

A But they are close.

Q Mrs. Hastings, did you know whether or not Hemphill Pride was tyring to get his license to practice law restored?

A Yes.

Q How did you know?

A He was completely consumed by that. He talked it day and night. He talked it all the time. He wrote it and he talked it. That was his all-day talk.

1 Hastings - direct

2 Q So are you saying in those phone calls

3 you received from him and in those letters he talked

4 about getting his license restored?

5 A Oh, yes. He always-- He wanted to

6 practice back in Columbia, and I didn't think he should

7 do that. I thought he should go try somewhere else.

8 Q All right, Mrs. Hastings.

9 Do you have any specific knowledge about

10 any efforts that Al and Bill Borders may have made to

11 try to help Hemphill in October of 1981?

12 A No, I don't know of anything that they

13 tried to help him.

14 They helped him in many Octobers. Al

15 did. I don't know what Borders did. But Al helped

16 Hemp many Octobers.

17 Q Okay.

18 Did Al tell you about a call from Hempy

19 regarding the Chief Justice of the Supreme Court?

20 MR. WEINGARTEN: Excuse me--

21 THE WITNESS: He didn't tell me.

22 MR. WEINGARTEN: Objection. Hearsay.

23 THE COURT: Sustained.

24 BY MS. WILLIAMS:

25 Q Do you know anything about Hempy--

A Hempy--

THE COURT: One moment, excuse me, Mrs. Hastings. When you see the gentlemen rise, please don't answer.

THE WITNESS: I didn't see him, sir. I'm sorry.

MR. WEINGARTEN: I have an objection, your Honor. Hearsay.

THE COURT: It would appear it is going to be hearsay.

MS. WILLIAMS: Your Honor, I am asking her whether she knows not what she--

THE COURT: Until you develop the source of the knowledge, the Court cannot ascertain whether it is hearsay or not.

It would appear that any knowledge she would have would be as a result of something someone told her which would be hearsay unless within an exception, and there has been no exception demonstrated at this point.

The objection is sustained.

BY MS. WILLIAMS:

Q Did you communicate with Hemphill Pride such that you would learn about his meeting with the

Chief Justice of the South Carolina Supreme Court?

A Yes, I did. He told me that he was.

Q Hemphill Pride told you that he was--

A Yes.

Q --seeing the Chief Justice of the South Carolina Supreme Court?

A Yes.

Q All right.

Did he give you details about what was happening?

A Oh, no, no.

Al was down at your house and I called Al and told him that Hempy wanted to talk with him and to call him and Al called him.

Q All right.

While we are talking about telephone calls, Mrs. Hastings, let's discuss your telephones and the circumstances surrounding them.

Late in the summer of 1981, did you receive a call from an attorney by the name of Richard Katz?

A Yes, I did.

Q Did you take a message from Richard Katz?

A Yes.

Hastings - direct

Q And did you give that message to Al Hastings?

A Yes, I did. It was--

MR. WEINGARTEN: Excuse me, your Honor. I'm going to object and ask that we approach the Bench.

THE COURT: Counsel may approach the Bench.

[Sidebar conference between the Court and counsel out of the hearing of the jury as follows:]

MR. WEINGARTEN: I fear that we are about to get into an area that's still subject to ruling on the motion in limine with Richard Katz.

JUDGE HASTINGS: Well, may I, your Honor--

THE COURT: Well, I have one counsel to a witness, Judge.

JUDGE HASTINGS: You mean to tell me you're not going to let me say what I want to?

THE COURT: Well, you are represented by Ms. Williams, Judge.

JUDGE HASTINGS: I am here-- You let Bob and Reid say anything they want to at any time and now all I am trying to do is to put forward what this--

1 Hastings - direct

2 all I am going to say is, maybe the jury should be

3 removed and this situation should be resolved.

4 THE COURT: All right. We will excuse

5 the jury and hear you in open court.

6 Now, just so you understand, Judge.

7 When you were granted leave to represent yourself in

8 conjunction with Ms. Williams, the Court understood

9 that it was agreed and understood that the normal rule

10 would be followed and that when she was handling a

11 witness she would handle the witness, and when you

12 handled it you would handle it and we wouldn't have

13 double teaming.

14 JUDGE HASTINGS: But this is a Bench

15 conference, Judge.

16 THE COURT: Just a moment. Just a

17 moment.

18 Is that the understanding?

19 JUDGE HASTINGS: Insofar as--

20 THE COURT: That was the representation

21 made.

22 JUDGE HASTINGS: But this is a Bench

23 conference and we have all been up here talking. I

24 defy you to tell me--

25 THE COURT: Now, you don't defy me on

1 Hastings - direct

2 anything, Judge. Just be a little careful, a little

3 more--

4 JUDGE HASTINGS: It is impossible to

5 believe that Robert and Reid haven't done that before.

6 THE COURT: The Court finds great diffi-

7 culty in handling two sets of counsel.

8 JUDGE HASTINGS: I don't have any prob-

9 lems with that.

10 THE COURT: I don't quite understand

11 what you're saying.

12 JUDGE HASTINGS: I don't have any prob-

13 lems with what you are saying.

14 THE COURT: All right. We will leave it

15 there.

16 [Sidebar conference concluded and

17 the following proceedings were

18 had in open court:]

19 THE COURT: Ladies and gentlemen, the

20 Court is going to excuse you while it hears counsel on

21 a legal question which has arisen.

22 May I remind you not to discuss the case

23 during any of these recesses.

24 [The jury left the courtroom and

25 the following proceedings were

had:]

Hastings - direct

THE COURT: The record may show that the jury has departed the Courtroom, and the Court will hear counsel.

There is an objection to testimony concerning Richard Katz?

MR. WEINGARTEN: Yes, your Honor. And I think the appropriate thing would be a proffer at this point as to what the testimony would be.

Hastings - direct

THE COURT: Ms. Williams?

MS. WILLIAMS: I shall just continue, your Honor, from the point at which we stopped with Mrs. Hastings as the proffer.

THE COURT: Any way you wish. The Government has requested a proffer.

BY MS. WILLIAMS:

Q All right, Mrs. Hastings.

Did you give the message to Alcee Hastings that Richard Katz had called?

A Yes, I did.

Q And did he call more than once?

A Yes. He called several times.

Q All right.

Was contact between Richard Katz and Al finally established, phone contact?

A Yes, it was.

Q As a result of the conversation or conversations that Richard Katz and Al Hastings had, was some opinion formed about your telephones?

A Yes, it was.

Q And what was that opinion?

A That it was intercepted. That call was intercepted.

Hastings - direct

Q That the call was intercepted?

A Yes.

MS. WILLIAMS: All right. That's all I want to get out of her.

[Whereupon Mr. Weingarten and Ms. Williams conferred in subdued tones.]

THE COURT: May I inquire as to--

MS. WILLIAMS: Well, there is one further line.

THE COURT: Just a moment. On that matter, I believe--

Would you read the last question and answer back, Mr. Derry?

[The portion of the record referred to was read back by the reported as above recorded.]

THE COURT: I am just curious as to whose opinion you are referring to.

BY MS. WILLIAMS:

Q Did you form the opinion that the call had been intercepted?

A I did.

Q Did Al form the opinion that the call had

Hastings - direct

been intercepted?

A Yes, he did.

THE COURT: And when was this call, Mrs. Hastings?

THE WITNESS: It was in late July or August--

THE COURT: Of 1981?

THE WITNESS: Yes. 19--

THE COURT: Before this?

THE WITNESS: No. This was since this, since Bill Borders' arrest.

THE COURT: Since the arrest?

THE WITNESS: Yes.

BY MS. WILLIAMS:

Q Are you sure that it was since Bill Borders' arrest?

A No. It was before the arrest.

MS. WILLIAMS: Your Honor, we will be introducing the telephone toll records to show the exact date of the call.

THE COURT: And that was prior to the arrest?

MS. WILLIAMS: Prior to the arrest.

THE WITNESS: There was a lot of inter-

ception before and after the arrest and still interception.

THE COURT: Is there further direct?

MS. WILLIAMS: That's all for the proffer.

THE COURT: You indicated some other field, some other area?

MS. WILLIAMS: Yes, yes.

BY MS. WILLIAMS:

Q One more question, Mrs. Hastings.

Were some steps taken by you and Al to find out what was happening with the--

A Yes. We called the phone company.

Q And did the phone company come?

A Yes, it did.

Q On how many occasions? Was it more than one time?

A Well, I have called them recently so I don't know which time you're talking about.

Q I'm talking about prior to Bill Borders' arrest.

A We called them twice. It was one time.

Q One time?

A Yes.

MS. WILLIAMS: All right. Okay.

1 Hastings - direct

2 MR. WEINGARTEN: Your Honor, we respect-

3 fully object to this.

4 THE COURT: Do you wish to add anything

5 to the proffer?

6 MR. WEINGARTEN: No.

7 THE COURT: When the telephone company

8 came, what happened?

9 THE WITNESS: He said the lines were

10 crossed and so I said, "Well, how could the lines be

11 crossed?" Because we have three different lines in

12 the house, two different numbers, you know. And I

13 said, "Well, how could the lines be crossed"? He said,

14 "Well, you didn't do it, but somebody did."

15 And the man, he didn't even look like

16 the same man that came in there that left there. He

17 looked strange when he left there.

18 THE COURT: Do I understand, Mrs. Hastings,

19 he said the lines were crossed in some way?

20 THE WITNESS: Yes.

21 THE COURT: Did the telephone man say

22 the telephone had been tapped?

23 THE WITNESS: No, he didn't say that.

24 He said the lines were crossed.

25 THE COURT: Yes. Anything further?

Hastings - direct

MS. WILLIAMS: Not in the way of proffer, Your Honor.

THE COURT: Mr. Weingarten?

MR. WEINGARTEN: We object to this, Your Honor. We think it is relevant that Judge Hastings may have believed, in October, '81, that his phones were being tapped but we think whether or not Richard Katz made a call in August, whether or not Mrs. Hastings had an opinion, is all irrelevant and it is confusing to the jury and whether or not--and we also object to Mrs. Hastings giving that opinion as to what Judge Hastings was thinking in October, '81.

We also believe that what the telephone company might have said to Mrs. Hastings or Judge Hastings is hearsay.

THE COURT: Of course what the telephone company apparently said was the lines were not being tapped.

MR. WEINGARTEN: And I understand the defense is going to introduce some of the records and I suspect accompanying the telephone records would be the telephone company and that would be the proper source for that evidence if it is admissible.

THE COURT: Ms. Williams?

1 Hastings - direct

2 MS. WILLIAMS: Your Honor, if Judge

3 Hastings had an opinion that his phone was tapped then

4 we think he ought to be able to establish how that

5 opinion was formed.

6 THE COURT: All right. Already in

7 evidence is that at the relevant times the defendant

8 felt that his phone was being tapped, the particularly

9 relevant time being October 5th, I believe, when the

10 Government has offered a particular telephone conver-

11 sation. The Court can perceive no relevancy to any

12 opinion which either defendant or present witness

13 might have had concerning this matter in late July or

14 August of 1981. The danger of confusion to the jury,

15 the waste of time, misleading the jury in the Court's

16 view outweighs any possible probative evidence. Under

17 Rule 403 the objection is sustained.

18 MS. WILLIAMS: Point of clarification,

19 Your Honor?

20 THE COURT: And the proffered evidence

21 will not be presented to the jury.

22 MS. WILLIAMS: At what point is the

23 relevant time to establish that Judge Hastings felt

24 that his lines were tapped such that that would affect

25 this case in the October 5th conversation? If he

Hastings - direct

believed beginning and late August up until October and even thereafter, in November, that his lines were being tapped that he would conduct himself according, at what point are we supposed to establish that, if not from the beginning, and carry through?

THE COURT: You are asking the question of the Government?

MS. WILLIAMS: No, I need clarification from Your Honor.

THE COURT: The Court's ruling, I believe, speaks for itself: mainly, on the evidence concerning any opinion the witness may have had or the defendants may have had in late July or August, 1981 is not relevant. To the extent it might conceivably be considered to have any probative value under Rules 3 the Court finds that any such probative value is essentially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury and also by consideration of undue delay, waste of time. The objection has been sustained.

If further grounds for the Court's ruling is necessary also this witness' opinion as to whatever view the defendant may have had at the time would be equally inadmissible, apart from any other

Hastings - direct

consideration.

Do you have further testimony from--

MS. WILLIAMS: I do, Your Honor.

THE COURT: The jury may be recalled.

THE BAILIFF: Yes, Your Honor.

(Jury present.)

THE COURT: Ladies and gentlemen, in your absence the Court has heard counsel and has sustained the Government's objection to further testimony from the witness concerning a telephone call from Richard Katz as being irrelevant to any issue before you and you may therefore disregard the fact that question was asked.

MS. WILLIAMS: May I proceed?

THE COURT: Yes.

MS. WILLIAMS: All right.

BY MS. WILLIAMS:

Q Mrs. Hastings, do you recall the day of October 9, 1981?

A Yes, I do.

Q What unusual occurrence took place on that day?

A Well, that was the day that the reporters kept calling the house and finally I asked

1 Hastings - direct

2 one of the reporters what-- Why were they calling like

3 that; what was they calling about. They said that

4 Bill Borders was arrested and that my son was-- John

5 Shorter had told him to tell Al that-- I am ahead of

6 myself. Would you ask me the question again?

7 Q All right. The reporter told you that

8 Bill Borders was arrested and your son was implicated?

9 Is that right?

10 A Yes.

11 Q About what time did they start calling?

12 A They started about-- It was after

13 12:30. I had watched the 12:30 news and it was after

14 I went to take a nap and I did fall asleep and then

15 the phone started to ringing.

16 Q Okay. So, it was after--

17 A So it was after 12:30. So it was in

18 the afternoon.

19 Q All right, fine. Now, after you

20 started receiving these calls from reports did you

21 subsequently get a call from some member of Al's staff?

22 A Yes.

23 Q Who called?

24 A Jeff, Jeff Miller.

25 Q What did he want?

Hastings - direct

A He wanted to know if I had a number for the judge.

Q Did you have one?

A No, I didn't.

Q All right. Did you finally hear from your son?

A Yes. He called right after Jeff called.

Q And what did he say?

A Well, he had heard the same thing that I had heard, that Hempy told him that Shorter had told him that the FBI was seeking of an interview with him.

Q What did you say to your son?

A I-- Well, he told me he was going to see about Bill Borders and I told him to come home.

Q You told him to come home?

A Yes.

Q Did he say that he would, at that point?

A No, he didn't.

Q All right.

A Not at--not then.

Q Did you receive any other calls?

A Yes. The FBI called.

Q And what did they want.

A They wanted to know did I know where he

was and I told him he was in Washington.

Q Did you have any visitors then?

A Well, the reporters were always out there knocking on doors, peeking in windows, banging. And then you came over.

Q And what happened when I came over? What was your state? Were you upset?

A Yes, I was very upset.

Q Did I try to calm you down?

A Yes.

Q Okay. Did I make any suggestion to you?

A Yes. You asked--told me--asked me did I have any brandy in the house and I told you no, and you said, "Well, would you like me to get you some?" And I told you, see, I felt that would be good because I was extremely shook up.

Q All right.

A Still am.

Q So, I left then. Is that right?

A Yes, you left. You went--left and went to get the brandy.

Q Were the reporters still there-- Describe what the reporters were doing and where they were.

Hastings - direct

MR. WEINGARTEN: Excuse me. I object on relevancy grounds. I can't see any relevance as to what the reporters were doing.

THE COURT: If you wish to approach the Bench?

MS. WILLIAMS: I do, Your Honor.

THE COURT: The Court will hear you.

(Sidebar conference between the Court and counsel out of the hearing of the jury as follows:)

MS. WILLIAMS: Your Honor, what Mrs. Hastings was experiencing is what she told Al Hastings that she was experiencing which affected his actions from Washington, D.C.

THE COURT: All right.

MR. WEINGARTEN: What she was experiencing is one thing--okay, withdrawn.

THE COURT: You withdraw the objection?

MS. WEINGARTEN: Yes.

THE COURT: The objection is withdrawn.

(Sidebar conference concluded and the following proceedings were had in open court.)

THE COURT: The objection has been

Hastings - direct

withdrawn. The reporter will read the last question back to the witness.

(The question referred to was read back by the reporter as above recorded.)

THE WITNESS: You want me to answer?

THE COURT: Yes.

A They were knocking on the door. They couldn't ring the doorbell because my screen door was latched, but they was knocking on the screen and bamming on the screen and even peeking in the windows until I drew the shades.

Q Mrs. Hastings, had they been doing that for some period of time?

A Yes, but they didn't do it constantly.

Q All right.

A They would go away and then they would come back. I don't know if it was a new group or if it was the same ones.

Q Had they been doing that the first time you heard from your son?

A Yes.

Q The first-- Did you tell him?

A Yes. Oh, he could hear them.

Q All right.

1 Hastings - direct

2 A He could hear them because where I was

3 standing in the kitchen I could see them coming over

4 the wall and I imagine I was screaming. I don't know

5 how Al even understood what I was saying because I was

6 extremely upset that those reporters were just knocking

7 and phones ringing.

8 Q All right. Now, did you hear from the

9 FBI?

10 A Yes.

11 Q You said they called and asked where he

12 was and you told them that he was in Washington?

13 A Yes.

14 Q Did they call again?

15 A Yes, they called again.

16 Q Did Al call again?

17 A Yes, Al called again.

18 Q Did you tell him about the call from

19 the FBI?

20 A Yes, I told him about that.

21 Q What did he say to you?

22 A He said if they come there to let them

23 in and I told him I was going out on a little patio

24 there and I was going to put on some pants and go out

25 on the patio and he said, "No, mama. Don't do that.

If they come say you keep up with them. Don't go outside. You keep up with them as best you can."

Q Did he tell you to let them search the place if they had a warrant?

A Yes, he did.

Q All right. Now, did you tell-- I am sorry. I had called you. Is that right?

A Yes.

Q All right. Now, did--

A And I had called my brother, too.

Q You called your brother?

A Yes. I called him after the FBI called, because I sure didn't know what to do with the FBI. So, I said, "Come over." I called my brother.

Hastings - direct

BY MS. WILLIAMS:

Q Did he came over?

A Yes, he came over.

Q Okay. Now, before he came over did you hear from your son again?

A Yes, I did.

Q Okay.

A And he gave me a flight number.

Q He gave you a flight number?

A 237. Yes, he did, Flight No. 237.

Q What did he tell you to do with that flight number?

A He told me to give it to the FBI if they call there or come there.

Q All right, and then your brother came over?

A Yes. My brother came.

Q Now, when you were speaking to your son this last time was all this noise still going on?

A Oh, yes.

Q Could it be heard over the phone?

A Yes. You could hear it over the phone and I am sure he did.

Q All right. And then I came to visit you?

Hastings - direct

A Yes.

Q And brought you some brandy. Is that right?

A Yes.

Q Okay. Was the phone still ringing?

A Yes.

Q How many phones are there in your house?

A It is two phones.

Q By this--

A Two separate lines.

Q --time are both of them ringing?

A Yes, but it is friends, too. Al's friends. And so it wasn't always reporters but the phones were just constantly ringing. And I don't get around well. When my brother got there he could help out.

Q Okay. Now, after your brother got there and after I had left did he get another call from the FBI?

A Yes. They called back.

Q And what did you tell them?

A I told them, I gave them that number, that 237.

Q You gave them the flight number?

Hastings direct

A Yes, I did.

Q Did they subsequently come by the house?

A Yes, they came to the house.

Q What did you tell him?

A I told him that Al was on his way home.

Q Okay. I suppose the same noise is still going on outside and the reporters are still--

A The Live Eye was there then, next.

Q Did you hear from Al, again? Did he call again?

A Yes, he did.

Q Where was he, this time?

A He was in the Fort Lauderdale Airport.

Q What did he say?

A He said he was going to rent a car and come home as quick as he could.

Q Did he do that?

A Yes, he did.

Q What happened when he got there?

A Well, I had kind of calmed down some after my brother got there and then stayed a little while and then he said he was going over to your house and he gave me your number and your address because I didn't know it too well from memory, at that time, and

Hastings - direct

he said if the FBI calls or comes to give them your number.

Q All right. Did they call?

A Yes.

Q Or come?

A Yes.

Q Which did they do? Did they call--

A They called.

Q They called?

A They called.

Q Did you give them--

A Yes, I did.

Q --the information?

A Gave them your number.

Q Okay. And did you hear from Al any more that evening?

A Yes. Later on that evening he called back and my brother was still there with me and he said that he had either--either talking or had talked to the FBI.

MS. WILLIAMS: I have no further questions, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. WEINGARTEN:

Q Mrs. Hastings, my name is Reid Weingarten and I am the Government attorney in this case.

A Yes.

Q I will be asking you a few questions.

A All right.

Q Mrs. Hastings, you have testified about Hemphill Pride. Is that correct?

A Yes.

Q Is it fair to say that Hemphill Pride and Judge Hastings are extremely close, extremely close friends and have been so for many years?

A They are close.

Q Is it a fair thing to say that they are close friends?

A Oh, yes.

Q Now, you have testified that Hemphill Pride was interested in getting back into the practice of law.

A Yes.

Q Once he left prison? Is that correct?

A That is right.

Q Do you know for a fact that Hemphill

Pride left prison on May 9, 1981, to come back to South Carolina? Do you recall it being around that time?

A Yes, I do.

Q And do you recall a few months after he was released from prison that he was indefinitely suspended from the practice of law by the State of South Carolina? Do you know that?

A Indefinitely.

Q Yes.

A Suspended? No, I didn't know that.

Q You hadn't heard that?

A No. I hadn't heard he was indefinitely suspended.

Q Did you know that by the law of South Carolina Hemphill Pride--

MS. WILLIAMS: She is not a lawyer, Your Honor. It is outside the scope of knowledge of the witness.

MR. WEINGARTEN: I think it is directly related to the examination by Ms. Williams.

THE COURT: The objection is overruled.

A I thought he was suspended for a period of time.

Hastings - cross

BY MR. WEINGARTEN:

Q What period of time did you understand?

A I think three years. I am not sure.

Q All right. So that Hemphill Pride, to your knowledge, would not have been able to practice law for a period of time?

A Yes.

Q So, is it fair to summarize that Hemphill Pride, once he left prison, wanted to go back to being a lawyer but wasn't able to for a number of years. Is that your understanding?

A No. Not really.

Q What is your understanding?

A My understanding was that he could go back and practice law.

Q But that he had to sit out a period of time?

A Yes.

Q Is it fair to say that on a number of occasions your son has helped out Mr. Pride, financially?

A Yes, it is.

Q Are you aware of an occasion when Mr. Pride was in prison that he asked Judge Hastings, your son, to solicit funds from among their friends to

Hastings - cross

assist him in a court appeal? Did you know anything about that?

A No. I don't know anything about that.

Q So, you wouldn't know--

A Assist in a court appeal?

Q Yes.

A When he was in prison?

Q Yes.

A Let me see.

Q Perhaps I can help you this way: Are you familiar with a letter that Hemphill Pride wrote to your son requesting that your son go out and solicit funds to assist him in his appeal?

A Oh, yes. He, Hemphill, sent letters appealing for funds.

Q Are you aware of the fact that when Hemphill was in prison and made such a request that your son turned him down and said it would be improper for a Federal Judge to go out and solicit funds?

A Oh, yes. I do.

Q You know that?

A Yes, I know he did that because I talked with him about that, myself.

Q Okay. Now, Ms. Williams asked you a

question about a message that you received from Mr. Borders on Sunday, October the 4th. Is that correct?

A That's right.

Q What was that message?

A It was something concerning Hemp.

Q How do you recall that?

A Well, I don't really recall the message no more than I knew it was about him.

Q Now, it is fair to say that in the course of a day when Judge Hastings isn't there many, many people call; isn't that true?

A Yes, but listen to this: When it is something that you don't think it is important, you know, I didn't think it was important.

Q Did you write anything down about that message?

A No, I didn't.

Q Do you know where Borders was, at that time?

A No, I don't.

Q Do you remember all the time that Borders calls Judge Hastings?

A All the times? No. I don't know all

1 Hastings - cross

2 the times Borders would call my son.

3 Q Do you have a recollection of every time

4 Borders would call and you picked up the phone?

5 A Oh, no. I don't have a recollection of

6 every time he would call because he just called any

7 number of times.

8 Q All right.

9 A I wouldn't go into trying to remember

10 how many times someone had called.

11 Q But you just happen to remember this one

12 on Sunday, October the 4th?

13 A Yes.

14 Q Okay. Mrs. Hastings, October the 9th,

15 the day Borders was arrested, when was the first time

16 that you had heard Borders was arrested? Who told

17 you first?

18 A A reporter.

19 Q And can you give us a time of that or

20 would it be just approximate?

21 A No. I can give you afternoon, after

22 12:30.

23 Q Okay, and did you testify that after

24 the reporter called, your son called?

25 A Yes. He did.

1 Hastings - cross

2 Q Where did he say he was?

3 A He said he was at the L'Enfant Hotel in

4 Washington.

5 Q All right, and did he call collect?

6 A No, he didn't.

7 Q He called from the hotel?

8 A Yes, but if he had called collect I

9 wouldn't have known because I don't pay the bills--oh,

10 yes, I would have because I would have had to tell

11 the operator that I would receive it. So he didn't.

12 Q Did that happen?

13 A Didn't call collect.

14 Q Okay. Did you speak to him later that

15 day?

16 A Yes, I did.

17 Q And--

18 A I spoke to him later on.

19 Q Where did he call from the next time?

20 A I don't know where he called from the

21 next time.

22 Q Did you receive instructions from your

23 son to tell people who called in that you didn't know

24 where he was or what he was doing?

25 A Would you repeat that again, please?

Hastings - cross

Q When your son called from Washington on October the 9th did he instruct you to tell people that you didn't know where he was or what he was doing?

A Oh, no. He didn't even have any conversation of that nature.

Q Okay. Do you recall a woman named Noel Smith calling your house on October the 9th?

A Noel called late that night.

Q And what did you tell her?

A I don't really recall, unless she was-- I don't know.

Q Didn't you tell Noel Smith that you hadn't heard from your son and you didn't know where he was?

A On October the 9th?

Q Yes.

A That I hadn't heard from him and I didn't know where he was?

Q Yes.

A Oh, I see what you are talking about. I tell lots of girls that.

Q Did you tell Noel Smith that because your son had told you to tell people that you didn't

1 know where he was--

2 A I don't quite understand your question.

3 Q All right. Let me make it as simple

4 as we can. After your son had called and after

5 Borders had been arrested did Noel Smith call the

6 house and ask about Judge Hastings?

7 A I don't know if she called there on

8 October the 9th--

9 Q Do you have a recollection--

10 A --or not.

11 Q --of telling Noel Smith, on Friday

12 evening, after you heard from the Judge--

13 A Oh, I know I probably told her that.

14 I probably told her that I didn't know where he was

15 because I didn't--as shook up as I was?

16 Q So is that what you told her, that you

17 didn't know where he was and you hadn't heard from

18 him?

19 A I probably did.

20 Q Now, did there come a time after your

21 son arrived home and left to Ms. Williams' house that

22 the FBI came to your house?

23 A No. The FBI didn't come back to my

24 house after my son left. If they did they didn't

25

1 Hastings - cross

2 announce themselves.

3 Q Didn't they come to your house, meet

4 with you and didn't you tell them you didn't know where

5 your son was?

6 A Oh, they came there right after

7 Ms. Williams left but they never made two trips. They

8 didn't make but one trip.

9 Q What did you tell the FBI when you saw

10 them?

11 A I told them he was on his way home and

12 he was--

13 Q And you didn't tell the FBI that you

14 didn't know where your son was?

15 A Oh, no.

16 Q Mrs. Hastings, at one point in your

17 direct testimony I think you mentioned the fact that

18 you had gotten ahead of yourself. Is it fair to say

19 that you have gone over your testimony with your son

20 and Ms. Williams many times in anticipation of your

21 court proceedings?

22 A Not many times. Not many times. But

23 I have gone over it with Ms. Williams.

24 Q In fact, was there a written script

25 that was given to you so that you would learn your

testimony?

A Oh, no.

Q Nothing of that nature?

A There was nothing about this was necessary for me to learn. If I missed saying something that I wanted to say and you might have interpreted it as being missed, but it is just because I have never spoken to over 10 people in my life in front of, and I am still nervous.

Q Is it fair to say that you love your son very much?

A Of course.

Q Is it fair to say you are extremely proud of him?

A Yes.

Q Is it fair to say you are extremely proud of him?

A Yes.

Q Is it fair to say that you would do anything in the world to help him?

A Yes. I would do anything to help him.

MR. WEINGARTEN: Thank you very much. No further questions, Your Honor.

THE COURT: Redirect?

1 MS. WILLIAMS: Nothing further, Your
2 Honor.
3 THE COURT: Thank you.
4 THE WITNESS: Thank you.
5 THE COURT: Thank you, Ms. Hastings,
6 and you may step down at this time. Perhaps we'll
7 take our mid-morning recess at this time. While this
8 witness is leaving and the next witness is being
9 called, 15 minutes, ladies and gentlemen.
10 (Recess taken, after which the
11 following proceedings were had:)
12 (Jury present:)
13 THE COURT: The defendant may call his
14 next witness.
15 MS. WILLIAMS: Thank you, Your Honor.
16 Alvoyd Merritt.
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Mr. ANDERSON. Moving from the questions that relate to Mr. Pride and his relationship with the judge, our next witness offered through prior testimony is Lisa Goldstein. Mrs. Goldstein was a clerk for Judge Alcee Hastings prior to the time Mr. Miller joined his chambers. Mrs. Goldstein testified concerning her clerkship with Judge Hastings, but specifically she testified that she had left chambers with a significant matter and the work was incomplete and that had indeed inconvenienced both the judge and herself in efforts to get that matter completed after she had left chambers. Her testimony was offered as bearing upon reasons why Judge Hastings might after that have had a reason to insist that his clerks finish their work prior to the end of their term. Her testimony is offered both for that purpose and it is from the 1983 trial.

The CHAIRMAN. Again, that is testimony covered by the committee's 8th order and it will be admitted.

PRIOR TESTIMONY OF LISA GOLDSTEIN IN *UNITED STATES v. HASTINGS*

1 MR. RICHTER: May we approach the Bench
2 on this, your Honor?
3 THE COURT: Counsel may approach the
4 Bench.
5 [Sidebar conference between the
6 Court and counsel out of the
7 hearing of the jury as follows:]
8 THE COURT: What is the name of this
9 witness?
10 MS. WILLIAMS: Lisa Goldstein.
11 MR. RICHTER: Your Honor, I am aware,
12 from what they have told me, of at least two purposes
13 they are planning to call her for.
14 One is something to do with the fact
15 that she worked on a case that she didn't finish before
16 she left and that created problems.
17 I would not object to that. I think
18 that is somewhat probative of the Judge's state of
19 mind in telling Miller to finish an order.
20 I think that she is not a proper witness
21 to talk about the way the Chambers were run generally.
22 THE COURT: The way what?
23 MR. RICHTER: The Chambers were run
24 generally.
25 She was there the year earlier. Unless

her testimony is going to be that Jeff Miller somehow gave out orders to attorneys early, I don't see how her discussion on general procedures in Chambers a year earlier is probative.

It seems to me it is similar to a lot of this attorney testimony that came in and can only serve to confuse the jury.

THE COURT: Ms. Williams?

MS. WILLIAMS: Yes, your Honor.

We intended to use Lisa to discuss the mechanics of the issuance of orders and law clerkship with Judge Alcee Hastings.

In addition to that, I also wish to use Lisa to discuss a conversation that she had with the Judge wherein he related some opportunities that he had for employment with private firms in an area wherein he received twice the salary he was receiving here and his failure to do so, because he left that what he was doing was enjoyable to him and--

MR. RICHTER: That is just hearsay, your Honor.

MS. WILLIAMS: Those are the purposes, and so there you have her testimony.

MR. RICHTER: That is pure hearsay if it offered for the truth of the matters stated.

1 THE COURT: The second aspect of the
2 testimony would appear to be clearly hearsay.
3 MS. WILLIAMS: She would also testify
4 to acts that she knows that he has undertaken where
5 money was not a consideration but the outcome or the
6 need for the act.
7 THE COURT: How would she know that?
8 From what the Judge told her?
9 MS. WILLIAMS: No. Because she viewed
10 them.
11 THE COURT: No problem there. But you
12 are familiar with what the Judge may have said to her
13 about turning down other jobs is, of course, hearsay,
14 inadmissible, and the question should not be asked.
15 MS. WILLIAMS: All right. I said all
16 right.
17 THE COURT: What?
18 MS. WILLIAMS: All right.
19 THE COURT: I don't think a proffer is
20 necessary here.
21 MR. RICHTER: Are we going to go into
22 the general procedures in Chambers?
23 THE COURT: Without knowing specifically
24 what we are talking about, I see--
25 She was the clerk replaced by--

MS. WILLIAMS: Jeffrey replaced her.

THE COURT: --Miller?

MR. RICHTER: A year before.

THE COURT: Was she in the Romano case?

MR. RICHTER: She did up until the summer of 1980.

MS. WILLIAMS: Yes, she did.

THE COURT: I want to specifically caution you again, Counsel, about leading, because there are areas which are plainly hearsay and you should not ask a leading question.

Do you understand that?

MS. WILLIAMS: Yes, Judge.

THE COURT: There has been so much leading in this case that I absolutely insist that there not be leading by either counsel, any counsel.

So, particularly in this area whereby even asking questions relative to hearsay, and we get it before the jury, it may be the basis of a mistrial motion by the Government.

I don't think anybody wants that.

MR. RICHTER: I would appreciate it. I know it is not the Court's practice, but in areas where there are just blantantly leading questions, we've been put in a position, your Honor, and we think improperly,

in the sense of having to object to half the questions that are asked in this trial, on the--

THE COURT: The Court has directed counsel not to lead, and the defendant, Judge Hastings.

You understand that, Ms. Williams?

MS. WILLIAMS: Yes, Judge.

THE COURT: And it will be the subject of disciplinary action if there is leading.

MS. WILLIAMS: What disciplinary action, Judge?

THE COURT: What?

MS. WILLIAMS: What disciplinary action?

THE COURT: Contempt of the Court order.

The Court orders that there will be no leading questions.

MS. WILLIAMS: We'll just take one minute to put on the record that if the Government has been put in a position by the way the trial has been progressing and what it can and cannot do, the defendant feels as strongly that it has been put in a very difficult position by what it can and cannot do.

THE COURT: You mean evidence that has been excluded?

MS. WILLIAMS: In the area of evidence, as to what it can and cannot do.

THE COURT: The Court has ruled--

MS. WILLIAMS: I understand that.

THE COURT: The Court has applied the rules of evidence to the proffers which have been made and, as you are aware, if it is legally an incorrect ruling in any respect, an Appellate Court will correct it.

MS. WILLIAMS: I am fully aware of that possibility, your Honor.

1 THE COURT: There are few rulings which
2 this Court has had to make over many years which are
3 more competent than the rules excluding evidence as on
4 this New Jersey incident which it excluded yesterday--
5 MS. WILLIAMS: We don't have a problem
6 with the exclusion of that particular evidence. It is
7 the ones that really relate to the case that have been
8 excluded that we have a problem with.
9 THE COURT: The Court realizes that and
10 the Court has ruled, but you should accept the Court's
11 ruling and the Court will simply say that it is ruling
12 on law and rules of evidence as the Court understands
13 they exist.
14 I will not repeat the rulings made
15 yesterday at this time, except to say they are made on
16 the basis of Federal Rules of Evidence. And if the
17 Court has erred in that respect, obviously the defendant's
18 rights are protected.
19 MS. WILLIAMS: And we accept the Court's
20 ruling since we have no choice but to do so.
21 THE COURT: That is true of any counsel.
22 [Sidebar conference concluded and
23 the following proceedings were
24 had in open court:]
25 THE COURT: Next witness may take the
stand.

Thereupon--

LISA GOLDSTEIN

was called as a witness by the Defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Be seated.

State your name, please, and spell your last name.

THE WITNESS: Yes. My name is Lisa Goldstein, G-o-l-d-s-t-e-i-n.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Good morning, Miss Goldstein.

A Hi.

Q Where do you live?

A Lauderhill, Florida.

Q And what is your profession?

A I'm an attorney.

Q How long have you been an attorney?

A I have been admitted to practice in the State of Florida since 1977.

Q Were you ever in the employ of Judge Alcee Hastings?

A Yes, I was.

1 Goldstein - direct

2 Q When was that?

3 A I guess it was October 1979 to October

4 of 1980.

5 Q And when did Judge Hastings assume the

6 Bench?

7 A At the time that I assumed my job.

8 Q All right. Fine.

9 Now, in your employment with Judge

10 Hastings, can you recall instances wherein the Judge

11 asked you or other members of his staff to do something

12 in immediacy?

13 A Frequently.

14 Q Would you tell the jury about those

15 instances, please?

16 A When I assumed my position, the Judge

17 was a new Judge and we assumed a certain case load and

18 we must have always been fifteen months behind. And

19 so, as trials came up, we not only had to prepare

20 orders that were issued from the Bench, that is, only

21 orders that had to be put in writing, but we also had

22 to continue to do the daily work, respond to motions,

23 finish up cases and that sort of thing.

24 So, there were oftentimes when the Judge

25 was in trial that we had to put orders together with

great immediacy.

There would be times when I would forget about doing things for a while, and the Judge would politely remind me that I had certain work that I had to keep up with.

So that is in general.

Specifically, the last major case that I was involved in was called the Royal Typewriter case. It was a two-month trial and there would be oftentimes that there would be orders in that particular case that we would have to--that I would be responsible for drafting and presenting to the Judge that I worked on.

Not only that, after the jury came back in that particular case, there were orders that had to be completed for the Appellate proceedings, and at that particular time, I was in the process of winding down and resigning. And I wound up taking that particular case with me. I took it home with me. The Judge was kind enough to let me do that.

And he used to call me at home to make sure that I completed my work. And as it turned out, it was too much for me, unfortunately, and my successor, Jeff Miller, wound up completing that particular case.

1 Goldstein - direct

2 BY MS. WILLIAMS:

3 Q Did that situation create any diffi-

4 culties that you are aware of for the Judge himself

5 or for the office itself?

6 A Well, I'm sure it put the Judge under a

7 certain amount of pressure. Once a case is completed

8 at the trial level, it's necessary, since the appellate

9 proceedings usually take quite a bit of time, to make

10 sure that you complete your work as quickly as

11 possible and get it off to the Appellate Court as

12 quickly as possible.

13 I am sure he was under a certain amount

14 of pressure to get it done, and it was a complicated

15 case.

16 Q It was a complicated case?

17 A Yes.

18 Q And had you been the law clerk who had

19 sat in on all proceedings?

20 A I sat in on almost all.

21 Q And you had done all the research up to

22 the point of leaving?

23 A Absolutely.

24 Q And then what happened when you left?

25 A Well, if you can imagine--

Goldstein - direct

THE COURT: Counsel is leading the witness.

THE WITNESS: Okay.

BY MS. WILLIAMS:

Q What happened when you left?

A Certainly. If you can imagine a case that had been in litigation for five or six years, the volumes of paperwork were just enormous and when I completed it, I took cartloads of files home and I did as much as I could on the case and then I had to turn it back over to Jeff because physically I was just unable to continue.

Q Did you have discussions with Jeff subsequent to that time?

A Well, it was necessary to talk to him about the case simply to bring him up to date as to what had been happening and when anybody takes over anybody else's workload, not only is there a question of not being able to read somebody else's writing, but there's also a question as to legal issues that might be necessary to brought forth to the appellate level and therefore Jeff and I did discuss the case quite extensively.

Q All right. In your capacity as a law

1 Goldstein - direct

2 clerk, did you have considerable contact with the

3 attorneys of record on the cases assigned to you?

4 A Well, it's necessary to have a certain

5 amount of contact. Most attorneys are anxious because

6 their clients are anxious to know what is happening

7 at any given point in time and because the trial

8 level courts are, at least in our particular court,

9 were overburdened with work, and it was necessary to

10 at times talk to the lawyers, yes.

11 But I might add, we never--at least I

12 never personally--talked to them about what would be

13 happening on a case, but rather that the case was in

14 progress. I never felt that it was my function as a

15 law clerk to give them advance notice of what the

16 Judge would say because I was not the Judge so we

17 never discussed anything concerning content of orders

18 or anything that would be produced by the Judge and

19 officially signed by the Judge. It was just not my

20 place to do that.

21 Q What conclusions did you draw from

22 your association with the Judge as to the importance

23 of money in his life?

24 A That's an interesting question. The

25 Judge and I oftentimes would arrive in the office very

early in the morning, 7:30 or so.

MR. RICHTER: Your Honor, could I please have the witness admonished not to present any hearsay testimony at this point.

THE COURT: You are not to relate anything the Judge may have said to you, Mrs. Goldstein. I believe this is a matter the Court discussed with counsel at the Bench.

MS. WILLIAMS: Yes, Your Honor.

THE COURT: And the Court sustains the Government's objection.

MS. WILLIAMS: Yes, Your Honor.

THE COURT: On hearsay grounds.

MS. WILLIAMS: Yes, Your Honor.

THE COURT: And in light of the Court's ruling, counsel should not proceed to inquire into areas which the Court has ruled to be hearsay.

BY MS. WILLIAMS:

Q Mrs. Goldstein, did you draw any conclusions about the importance of money in the Judge's life based on anything other than what he may have said to you?

MR. RICHTER: Your Honor, I don't see how that's possible to answer.

Goldstein - direct

THE WITNESS: I can give you specific instances and observations based on--

THE COURT: The Court hears no objection.

MR. RICHTER: As long as there's no hearsay presented.

MS. WILLIAMS: The question is phrased such that no hearsay is called for.

THE COURT: No hearsay. You understand you are not to relate anything that the Judge or anyone may have told you. Just what you observed. You understand that?

THE WITNESS: Yes, I do, sir.

THE COURT: All right.

THE WITNESS: The Judge wore the same five suits throughout the entire year that I knew him. He drove the same car and lived with his mother in an apartment complex that I had lived in before we moved to our house and was generally not a materialistic sort of person.

Those kinds of things, at least for all outside appearances, just didn't really have any bearing on how he responded to people. He takes people on a one-to-one basis and what clothes you wear aren't really the measure of the man and that's

Goldstein - direct

absolutely true, at least from my personal experience with Judge Hastings.

MS. WILLIAMS: Thank you, Mrs. Goldstein. No further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. RICHTER:

Q Now, Mrs. Goldstein, I believe you testified-- My name is Robert Richter, by the way. How do you do?

A Hi.

Q I believe you testified that there were many times during your years as a clerk that Judge Hastings told you to get things done with some immediacy?

A Uh-huh.

Q Can you please recite every time he told you to get an order out that day, the same day that he mentioned it to you?

A Well, I mentioned the Royal Typewriter case. Now, since I haven't worked there in quite a long time and since that was the last major case I worked on, that's obviously the case that I remember the best, but I can give you fact patterns of cases.

Goldstein - cross

Q But did the Judge--cases where he came to you and said not that something needs to get out, but where he told you to get the order out today?

A Yes.

Q Please.

A The very first case we had in this particular courtroom involving a woman who had lost her arm in a hip operation. That was a case--

Q It's not necessary to give all the facts of the case.

A Well, again, because it's been a long time--

Q Sure. You are saying a case of immediacy. At what point does the Judge say to you to get something done that day?

A I'm giving you an example--

Q Please.

A --of a particular case. I had a case involving--I think a social security case--where he said I want something done now. It's not uncommon.

Goldstein - cross

Q Were these cases in trial?

A Some of them were in trial and some were not in trial. Specifically, cases that involve, let's say, criminal matters where the case was on appeal that needed to be done.

Generally speaking, law clerks don't handle, at least to my knowledge, don't handle pre-trial motions; but post-trial motions are handled by law clerks, and when it involves somebody being out on bond, on bail, who might skip, let's say, and there's a certain amount of immediacy that things get accomplished, yes, I was asked to do things with immediacy.

Now, it doesn't always mean that I did it but I was asked.

Q Do you have any specific examples of the Judge telling you to get an order out today? Now, it is not with a sense of immediacy but to get it done that day?

A Again, I can give you examples of those situations, but unfortunately I just don't remember case names that well. I mean, I don't know how many cases I worked on in that office.

Q Mrs. Goldstein, I am not trying to

1 Goldstein - cross

2 confuse you.

3 A No, I no. But I'm trying to tell you

4 the best that I can.

5 Q I am not interested in necessarily the

6 name of the case or even what the case is about. If

7 you know that, fine. What I am interested in is the

8 circumstance under which Judge Hastings told you--

9 A Right.

10 Q --to get the order out today?

11 A Okay. I will give you the circumstances,

12 but I can't give you case names, I am afraid.

13 Q Let's try.

14 A Once a case was finished with trial

15 and it was going to go up on appeal and an order had

16 to be written concerning a statement of facts, what

17 kinds of jury instructions, there might have been

18 legal reasons why the Judge did certain things, and

19 he would come and tell me because a lot of times

20 again I was behind in my work and if there were

21 certain things that he felt was of particular importance

22 he would tell me what to do, and again, he would tell

23 me, "I want the order out today."

24 Now, like I say, I couldn't always do

25 it. If the case was too complicated or if I didn't

Goldstein - cross

remember all the facts or if I had to go back and review the file, that sort of thing, I would do those things. That's what I would do.

Again, because it's been, gee, it's been quite a long time, I can't give you specific names of cases. I can go back and give you fact patterns, but I can't give you names of cases. I certainly cannot give you dates.

Q Mrs. Goldstein, give me a fact pattern where the Judge in a specific case, and if you don't know the case name--

MS. WILLIAMS: Your Honor, I wish to object. He is beginning to badger the witness and he has asked the question and she has answered it, and I object to this line of questioning.

THE COURT: Mr. Richter?

MR. RICHTER: Your Honor, we have gotten vague answers about the sense of immediacy in certain cases.

MS. WILLIAMS: No, she said he told her to do the order today. She just testified to that.

THE COURT: I understood you to say you could give fact patterns?

THE WITNESS: Yes.

Goldstein - cross

THE COURT: And the present question asked for fact patterns of the case.

MR. RICHTER: She stated that she can't remember names of cases. Fine. I want a specific instance when the Judge told her to get the order out today.

THE COURT: And the pending question asks for the fact pattern of a particular case.

MR. RICHTER: The fact pattern.

THE COURT: The Court is inquiring. Is that right?

MR. RICHTER: The fact pattern, in other words, the specific circumstances in a specific case of the Judge telling you to get the order out today, as many times as that happens.

Goldstein - cross

THE WITNESS: Okay. I believe I gave you at least one fact pattern. I don't know if you were listening to me but I did give you one fact pattern.

THE COURT: There will be no laughter and no conversation and no whispering, no commotion among the spectators. This disturbs the jury. The Court has cautioned the spectators for the last two days and repeats that caution at this time.

Is there a pending question?

MR. RICHTER: I asked her about six times.

BY MR. RICHTER:

Q Specific circumstances of the Judge telling you to get an order out today?

THE COURT: Is there an objection to that question?

MS. WILLIAMS: Would the court reporter read back the question, please.

[The question referred to was read back by the reporter as above recorded.]

THE WITNESS: Okay. The very first instance--

Goldstein - cross

THE COURT: The Court hears no objection?

MS. WILLIAMS: No, there isn't any.

THE WITNESS: The very first instance that I can remember as involving the United States Government wherein the jury had come back with a verdict against the Government where a woman had in the course of a hip replacement operation, had lost her arm, a tragic situation, and the Judge wanted an order done up immediately when the Government decided to appeal that decision.

That's one instance.

BY MR. RICHTER:

Q What was the--you say when the Government appealed a decision?

A Yes, the Judge wanted me to get out a final order so that the case could be wrapped up and sent up on appeal.

Q Okay, and what was the timing relative to when the appeal was filed?

A It was after the appeal was filed.

Q I mean, what was the event that triggered him saying to you to do something immediately?

A He would come into my office and he would ask something be done. There wasn't any

1 particular--there wasn't anything particularly unusual
2 about him asking me to get something done. If some-
3 thing was on his mind, he would ask me to get some-
4 thing done.
5 There wasn't any particular event that
6 triggered it.
7 Q Thank you, Ms. Goldstein. The Royal
8 Typewriter case?
9 A Yes.
10 Q Is it fair to characterize that case
11 as voluminous and the files you were responsible for
12 and what you had to take care of?
13 A That's an understatement.
14 Q And is it fair to say that as you were
15 leaving, there were still many unresolved issues in a
16 very complex case?
17 A Not many. Basically speaking--well,
18 basically speaking, because of the length of the
19 trial, it took, I think about two months. There were
20 quite a number of issues that were presented to the
21 jury for consideration.
22 As I recall, there were about 50-odd
23 pages of jury instructions. And the jury came back
24 completely against Royal Typewriter and awarded the
25

1 Goldstein - cross

2 defendant $5 million and, needless to say, the law
3 firm representing the plaintiffs, that is, Royal
4 Typewriter had quite a bit to say about what was wrong
5 with the jury instruction and therefore despite the
6 fact that they were in on some of those conferences
7 that we had regarding what would be said to the jury,
8 the jury instructions, they took the case up on appeal
9 naturally and they wanted some relief.
10 Now, as a law clerk, it was my job to
11 set out in a memorandum of law for the Judge as well
12 as to do up a proposed order, a statement of facts, a
13 statement of the issues presented, and what the legal
14 conclusions would be based on what the jury had
15 decided had happened in the case.
16 And this was just a monumental, tremen-
17 dous amount of work because it took recapping two
18 months' work of trial and reviewing transcripts and
19 reviewing memos that had been submitted over the
20 course of those two months in order to get it into
21 some sort of manageable form.
22 I didn't plan on writing a novel. I
23 planned on writing a memorandum and an order, but it
24 took a lot of compilation and at that particular point
25 in time for personal reasons, I was just not able to

Goldstein - cross

complete that particular aspect of the trial and that's basically what unfortunately I had to leave to my predecessor.

I felt badly about it, but that's where I was.

Q So it's fair to characterize the Royal Typewriter case as not being a question of an order involving one issue needing to be put from draft form into final form?

A There were issues that were raised during the course of that trial that had specific orders, that is, there were situations involving whether or not specific people could testify, whether or not certain issues could be presented to the jury, whether or not, you know, questions of relevancy as to what particular sections of testimony would be given and those sorts of orders were addressed before and after the trial.

If I couldn't get to it before the trial, I was reminded about it after the trial, and I got to it. But the major order that was not incomplete from my end of things was the final order, that is, the order that went up to the Appellate Court concerning jury instructions and the judgment itself.

Goldstein - cross

Q Is it fair to say, and please listen to my question--

A Yes, sir.

Q That at the time when you approximately had about a month left with Judge Hastings, would it be fair to characterize Royal Typewriter--what needed to be done in that case--as involving simply putting a draft order involving one issue into final form?

A No.

MR. RICHTER: I have no further questions.

THE COURT: Redirect?

MS. WILLIAMS: No questions, Your Honor.

THE COURT: Thank you, Mrs. Goldstein. You may step down.

[Witness excused.]

Mr. ANDERSON. The next witness also bears upon the question of the clerkship and a direct fact in this case, the Honorable James C. Paine, a judge of the United States District Court for the Southern District of Florida, was called at trial. He testified then that both Mr. Miller had been his intern before he went to Judge Hastings and that Judge Paine had sought to employ Mr. Miller as his law clerk when his term with Judge Hastings expired, that during the course of that summer he and Judge Hastings had conversations about keeping Mr. Miller on so that Mr. Miller could complete unfinished business pending in Judge Hastings' chambers. It bears both upon I suppose Mr. Miller's law clerk, but primarily on how it was that Mr. Miller came to remain on after September 30th and Judge Paine's desire that he complete his work as early as possible. It was offered at the 1983 trial and we offer it here.

The CHAIRMAN. Again, that is covered by Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF JAMES C. PAINE IN *UNITED STATES v. HASTINGS*

Thereupon--

JAMES C. PAINE

was called as a witness by the defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your name, please.

THE WITNESS: My names is James C. Paine, P-a-i-n-e.

THE COURT: Ms. Williams.

MS. WILLIAMS: Your Honor.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Good morning, Judge Paine.

A Good morning.

Q What is your position, please?

A I am a United States District Court Judge in the Southern District of Florida.

Q For how long have you been a United States District Court Judge?

A Approximately three years, a little over three years.

Q Judge, do you know Jeff Miller?

A Yes, I do.

Paine - direct

THE COURT: May I inquire, Judge, where is your court located?

THE WITNESS: My duty station is in West Palm Beach.

THE COURT: West Palm Beach?

THE WITNESS: Yes, sir.

THE COURT: Is that your residence, also?

THE WITNESS: Yes, it is.

THE COURT: Thank you, Ms. Williams.

MS. WILLIAMS: You are quite welcome.

BY MS. WILLIAMS:

Q Judge, did you say you know Jeff Miller?

A Yes, sir, I do know Jeff Miller.

Q When did you first meet Jeff Miller?

A I met Jeff Miller when he was a student at Nova Law School and when he applied for and was received as an intern in West Palm Beach, in our court.

Q All right. So, he interned for you.

A He did.

Q Did you anticipate that Judge--I am sorry, that Jeff Miller would return to work for you in your chambers?

A Well, I did at one time. Yes. He interned for me and after he left his internship and

1 Paine - direct

2 graduated from law school, which those two things

3 occurred at about the same time--

4 Q When he left your internship do you know

5 where he went?

6 A Yes. He went to work with Judge Alcee

7 Hastings as a law clerk there, that is here in Miami.

8 Q Were there arrangements made for him to

9 return to work for you?

10 A During the course ofhis clerkship with

11 Judge Hastings I discussed with him whether or not

12 he would like to join me in an extension of his clerk-

13 ship, really a different clerkship with me but an

14 extension of similar duties, when he finished the

15 period of time to which he was obligated to Judge

16 Hastings. I had been pleased with his work as an

17 intern and would have been glad to have him come with

18 me as a clerk after he finished with Judge Hastings

19 and that was agreed that he would do that.

20 Q All right. Now, was there a specific

21 date, understanding as to dates between you and Jeff

22 Miller as to when he would be coming to your employ-

23 ment?

24 A Yes. Initially, in, oh, probably spring

25 of 1981 we agreed he would finish his work with Judge

Hastings on or about September 1 and that he would join me in my office at about that time. The date wasn't just an absolute one but it was pretty definite, you know, but he was to come September 1.

Q And did that date change?

A Yes. I had some contact with Judge Hastings by telephone, perhaps face-to-face. I did some work here in Miami as well during the spring or summer of 1981--and he stated that he would like to keep Jeff with him longer than September 1 and could I manage to extend the date of his change from one clerkship to the other. I told him I would be glad to do that.

Q Was there-- Do you have specific recollection of any understanding between you and Judge Hastings as to a specific date for departure of Jeff Miller?

A Ultimately it was agreed that he would make the change on or about November 1. Now, I don't know that that, again, that that date was an absolute one but it was pretty definite that he would finish up his work at least sometime in October of 1981 and that he would come with me on or about November 1.

Q Then if he had finished up his work prior to November 1 you would have expected that he would

have come to your employment prior to November 1?

A Be glad to have him because I was employing Jeff, you see, as a third law clerk. We have two law clerks that are authorized, and I had asked for an authorization for a third law clerk because I had some unusually heavy cases, one very heavy one here in Miami facing me and the administrative office did authorize a third law clerk. Actually, I had the authorization after September 1 so I could have taken him as my third law clerk whenever he was available and I would have been glad to have him as soon as I could get him.

Q All right.

A So that was the way it was, although it was anticipated it would probably be about November 1 after he got there.

MS. WILLIAMS: All right. No further questions.

THE COURT: Cross?

MR. RICHTER: I have no questions, Judge.

THE COURT: Thank you, Judge Paine. You may return to West Palm Beach.

THE WITNESS: Thank you, sir.

JUDGE HASTINGS: The next defense witness

Mr. ANDERSON. The next witness whose prior testimony we would offer is Paul Snead. Mr. Snead, who was at the time I think an attorney in Altamonte Springs, Florida, knew both Judge Hastings and Mr. Pride. At the 1983 trial, he testified that, in September 1981, Judge Hastings had discussed with him writing a letter on Pride's behalf. His testimony is offered to show that at least there were persons with whom Judge had had such conversations prior to October 1981. The testimony that he offered at the 1983 trial is offered here.

The CHAIRMAN. Again, it is covered by Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF PAUL SNEAD IN *UNITED STATES v. HASTINGS*

15 JUDGE HASTINGS: Paul Snead.

16

17 Thereupon:

18 PAUL SNEAD

19 was called as a witness on behalf of the Defendant and,

20 having been first duly sworn, was examined and testified

21 as follows:

22 THE CLERK: Would you state your name and

23 then spell your last name, please.

24 THE WITNESS: My name is Paul Snead. The

25 spelling of the last name is S-n-e-a-d.

1 Snead - direct

2 DIRECT EXAMINATION

3 BY JUDGE HASTINGS:

4 Q Mr. Snead, where do you live, sir?

5 A I live in Altamonte Springs, Florida.

6 Q And a lot of people don't know where that

7 little country town is. What's it near?

8 A It is about 13 miles from Orlando going

9 north.

10 Q And how are you employed, Mr. Snead?

11 A I am the District Administrator for

12 HRS in Central Florida and that encompasses Orange,

13 Osceola, Seminole and Brevard Counties.

14 Q Brevard being the only non-Indian county?

15 I don't know, maybe it is an Indian County.

16 Mr. Snead, HRS, what is that?

17 A Health and Rehabilitative Services.

18 Q And does that mean by being the

19 Administrator that you are involved in what particular

20 programs?

21 A Well, we take care of all human services.

22 It's an agency for the State of Florida, and I just

23 happen to be the District Administrator for the central

24 part of the State.

25 Q Do you interface with the federal govern-

Snead - direct

ment in any way?

A Yes, much of our funds comes from the federal government. It comes through our State program office and it is sent locally for us to administer.

Q All right. Sir, do you know me, Mr. Snead?

A Yes, I do.

Q And how long have you known me, sir?

A Oh, approximately sixteen or seventeen years.

Q And how did we first come to know each other, sir?

A I met you in Altamonte Springs.

Q And do you know Hemphill Pride?

A Yes, I do.

Q Do you know all of my now-living relatives in Altamonte Springs? And the ones that are long before departed, did you know them?

A Yes, I do.

Q You knew my grandfather?

A Yes, I did.

Q You knew my uncle that is deceased?

A Yes.

Q And you knew my uncle that lives there

Snead - direct

now?

A Yes, I do.

Q You know all of my cousins that live there?

A I think I do.

Q They get littler and littler.

Mr. Snead, have you seen Hemphill Pride in Altamonte Springs?

A Yes, I have.

Q And have you seen him visit with any of my relatives?

A Your uncle and your mother.

Q All right, and did you by chance socialize with him on any of those occasions?

A Yes, I did.

Q Now, Mr. Snead, based on your observation of Mr. Pride, did you ever see me with him at any time?

A Yes, I did.

Q And based on that plus any other information you may have, do you believe that you could characterize Mr. Pride's and my relationship?

A Yes, I could.

Q Would you please do so.

A Well, I would think that you all were the best of friends.

Q All right. Let's discuss another date if we may, Mr. Snead, the date of September the 19th, 1981. Did you see me on that date, sir?

A On or about that date, yes.

Q And can you recall the circumstances under which you might have seen me?

A It is my understanding that you were making a speech before a fraternity at Blake Buena Vista.

Q Did you attend the speech?

A No, I did not.

Q Did you come to where the speech was made subsequent to its being made?

A Yes, I did.

Q And did you see me there?

A I did.

Q For how long were we in each other's company?

A Oh, I would say an hour or hour and a half.

1 Snead - direct

2 BY JUDGE HASTINGS:

3 Q Were there other persons in the general

4 area at that time?

5 A The members of the fraternity that

6 attended the speech.

7 Q Were there physicians from the Orlando

8 area that were there that you know?

9 A Yes, there were other physicians and

10 other professionals.

11 Q Mr. Snead, did I have a discussion with

12 you on that date regarding Hemphill Pride?

13 A Yes, you did.

14 MR. WEINGARTEN: I would like to

15 approach the Bench at this time, Your Honor.

16 THE COURT: Counsel may approach the

17 Bench.

18 [Sidebar conference between the Court

19 and counsel out of the hearing of the

20 jury as follows:]

21 THE COURT: What date is this?

22 JUDGE HASTINGS: September the 19th,

23 1981, the day Borders was given the money.

24 MR. WEINGARTEN: I ask for a proffer.

25 I see hearsay coming, and I would like to make an

1 Snead - direct

2 objection if it is appropriate before the question is

3 asked.

4 JUDGE HASTINGS: Judge--- Okay.

5 Mr. Paul Snead, if allowed to testify

6 as to the question just put to him, did I have a dis-

7 cussion with him, has already answered yes, I did.

8 I will next ask him, with the Court's

9 permission, based on that discussion did he do anything

10 and I don't know what his answer will be. I believe his

11 answer may very well be that he either did or did not,

12 and if he says that he did something, I will ask him

13 what. If he says that he did not, I will ask him why

14 not.

15 MR. WEINGARTEN: Well, I don't want to

16 keep running up to the Bench. I think I can ask for

17 a continuing proffer.

18 JUDGE HASTINGS: Wait a minute. Wait

19 a minute. I asked him to prepare at my designation

20 when I told him so a character letter for Hemphill

21 Pride. That's the essence of his testimony, and that

22 is very germane to this case.

23 THE COURT: A character letter for you?

24 JUDGE HASTINGS: No, sir, for Hemphill

25 Pride.

1 Snead - direct

2 MR. WEINGARTEN: Well, so he will say

3 yes, I am not---

4 JUDGE HASTINGS: He will say that I

5 indicated to him that he should prepare such a letter

6 and that I would tell him at the appropriate time that

7 I wanted him to do so.

8 MR. WEINGARTEN: So he will in essence

9 testify that you told him to prepare it.

10 JUDGE HASTINGS: That I told him that

11 I would call him and tell him when to prepare a

12 character letter for Hemphill Pride.

13 Reid, think back to the items of evi-

14 dence that you have had the benefit of under Rule 16.

15 The Judge doesn't have that.

16 THE COURT: Did he prepare such a

17 letter?

18 JUDGE HASTINGS: No, he did not, but I

19 indicated to him that I would tell him when, Your Honor.

20 Del Stewart has already testified to very, very similar

21 testimony.

22 MR. WEINGARTEN: I think that's hearsay.

23 I mean, it is being offered for the truth of what Judge

24 Hastings said out of court. It is self-serving hearsay.

25 THE COURT: No, it is not offered for

1 Snead - direct

2 the truth of what he said. It is offered for the fact

3 he said it.

4 MR. WEINGARTEN: If that's the Court's

5 ruling---

6 THE COURT: Well, it is. I mean, Judge

7 Hastings simply--this witness will testify that Judge

8 Hastings said will you prepare a character letter for

9 me. Now, that's not offered for the truth of the

10 content of what Judge Hastings said.

11 MR. WEINGARTEN: That's true if that's

12 what he said.

13 JUDGE HASTINGS: You can cross examine

14 him.

15 [Sidebar conference concluded and the

16 following proceedings were had in open

17 court:]

18 JUDGE HASTINGS: I have kind of lost

19 myself. Mr. Reporter, may I have you play back the

20 last question that I asked the witness.

21 THE COURT: Perhaps the one just prior

22 to that, too, with the answer.

23 [The portion of the record referred to

24 was read back by the reporter as above

25 recorded.]

JUDGE HASTINGS: Thank you, Your Honor.

1 Snead - direct

2 BY JUDGE HASTINGS:

3 Q Mr. Snead, based on that discussion

4 did you undertake to do anything?

5 A No, I did not.

6 Q Why did you not do anything?

7 A You did not ask me.

8 Q What specifically was it that I indi-

9 cated to you that I wanted you to do?

10 A That you might possibly ask me to

11 write a letter to Colombia.

12 Q And did I say where and for whom?

13 A To one of the courts for Hemphill Pride.

14 Q Thank you.

15 JUDGE HASTINGS: Your witness.

16 CROSS EXAMINATION

17 BY MR. WEINGARTEN:

18 Q Mr. Snead, I wasn't clear. Are you

19 related to Judge Hastings in any way?

20 A My wife is.

21 Q What is that relationship?

22 A She is his second cousin.

23 Q What court were you to write this letter

24 to? Do you remember?

25 A No, I don't.

Q Now, Hemphill Pride was on parole. Are you aware of that?

A Yes, I am.

Q And was the letter to have something to do with the parole?

A The substance of the letter wasn't discussed.

Q So, Judge Hastings casually mentioned somewhere along the line he might want you to write a letter to Colombia for Hemphill Pride?

A Yes, sir.

Q And you don't know if it is to the United States District Court where Hemphill Pride was convicted--

A I don't.

Q --in connection with his parole?

A No.

Q So, what you know about that request is that Judge Hastings came to you and said "I might want you to write a letter to a court in Colombia," and nothing further?

A That is right.

Q Did he ever come back and ask you "Have you written that letter?"

Snead - cross

A No, he did not.

Q Do you know anything about Hemphill Pride's legal status in Colombia?

A At this time?

Q Yes.

A No, I don't.

Q Did you know it at that time?

A I know he was on parole.

Q Do you know the specifics of his legal situation?

A I do not.

Q You are not a lawyer, are you?

A I am not.

Q Thank you.

JUDGE HASTINGS: No further questions of this witness, Your Honor.

THE COURT: Thank you, Mr. Snead. You may step down.

MS. WILLIAMS: Joe Gibson.

Thereupon:

JOSEPH WILBERT GIBSON

was called as a witness on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

Mr. ANDERSON. The next witness whose testimony we would offer is that of Shirley Ross. Ms. Ross was in 1981 a resident in Washington, DC. The events of September 11, 1981, have become facts of some significance. Ms. Ross was called to testify at the 1983 trial. She testified that Judge Hastings had invited her to have dinner with him when he arrived in Washington on September 11th, that he did arrive at her house by taxi, that he took her back to the Sheraton Hotel, that they had dinner at the Sheraton and she returned. It bears upon the question of the reasons why he was tardy or some people perceive him as being late in checking into the Sheraton that evening and the events of Friday, September 11, 1981, as they unfolded. We offer the testimony she gave at the trial as testimony here.

The CHAIRMAN. Again, that is testimony covered by Order 8 and it will be admitted.

PRIOR TESTIMONY OF SHIRLEY ROSS IN *UNITED STATES v. HASTINGS*

1 Marshalls are instructed that if there
2 is any such problem in the future, those who are
3 responsible will be withdrawn from the courtroom and if
4 necessary, the Court will have to be cleared except
5 for the news media who presumably, as always, are
6 behaving themselves.
7 I don't want to have to repeat this
8 every time I come into court.
9 Thereupon:
10 SHIRLEY ROSS
11 was called as a witness on behalf of the defendant and,
12 having been first duly sworn, was examined and testified
13 as follows:
14 THE CLERK: Would you state your name
15 and then spell your last name, please.
16 THE WITNESS: My name is Shirley Ross,
17 R-o-s-s.
18 DIRECT EXAMINATION
19 BY MS. WILLIAMS:
20 Q Mrs. Ross, it might be helpful if you
21 pull the mike a little closer to you.
22 Now, Mrs. Ross, where do you live?
23 A I live in Washington, D. C.
24 Q And how long have you lived there?
25 A About five years.

Q How are you employed?

A I am employed by the Environmental Protection Agency.

THE COURT: Excuse me, Miss Ross. I can just barely hear you. I am apprehensive some of the jurors may not be able to. If you could come closer to the microphone, and where did you say you were employed?

THE WITNESS: By the Environmental Protection Agency.

THE COURT: That's fine.

BY MS. WILLIAMS:

Q Miss Ross, did you see Judge Alcee Hastings on September 11, 1981?

A Yes.

Q When were the arrangements made for you to see him on September 11,1981?

A A few days prior to that.

Q And how did you come to see him on that date? For what purpose?

A To have dinner.

Q All right. Did you receive any phone calls from him on September the 11th regarding that dinner engagement?

A Yes.

Q Did you receive more than one phone call?

A Yes.

Q About what time did you receive the first phone call?

A Shortly after noon.

Q And what was the message?

A The message was that the plane would be delayed. Oh, no.

Q All right.

A The first time, he told me what time he was going to come.

Q Okay. Did you receive another call from him?

A Yes. The second call said that the plane would be delayed.

Q All right. Did you receive a subsequent call from him?

A Yes.

Q And what was that message?

A That the plane would be further delayed and he didn't know how long.

Q Now, are you able to put the times of

1442?

these calls in perspective? Can you tell me what ti
you received that first call wherein he told you what
time he was expected in?

A I would have to say around 1:00 o'clo

Q All right. Now, about what time did
receive the second call wherein he said that the plan
was delayed?

A I seem to recall it being about an hc
or so later.

Q All right. So we are talking about
3:00 o'clock or so?

A Yes.

Q All right. And the last call that h
spoke of wherein he said the plane was further delay
what time was that, approximately, as best you can
recall?

A Maybe half an hour after that, after
the second one.

Q All right. Did he eventually arrive
Washington, D.C.?

A Yes.

Q About what time did you see him?

A Around 9:00.

Q And where did you see him?

Ross - direct

A Out front.

Q Out front?

A Of my apartment.

Q Of your apartment, and what happened?

A I got in a taxi.

Q And where did you go?

A We went to the Sheraton Hotel.

Q All right. And at the Sheraton Hotel, did you have dinner?

A Yes.

Q Within the Sheraton?

A Yes.

Q And at what time did you leave the Sheraton?

A It was after midnight.

MS. WILLIAMS: All right. I have no further questions, Your Honor.

THE COURT: Cross examination?

MR. WEINGARTEN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WEINGARTEN:

Q Miss Ross, my name is Reid Weingarten and we have met before, haven't we?

A Yes.

1 Ross - cross

2 Q You came to my office over a year ago,

3 is that right?

4 A Yes.

5 Q Now, do you recall these telephone

6 calls very clearly that you just testified about.

7 A By very clearly, what do you mean? D

8 you mean in terms of what he actually said or what ti

9 he called?

10 Q Well, do you actually remember them

11 happening?

12 A Yes.

13 Q You recall in November of '81 you wer

14 interviewed by the FBI?

15 A Yes.

16 Q And do you recall at that time you

17 couldn't even remember seeing Judge Hastings on

18 September the 11th?

19 A I don't recallI it exactly that way.

20 Q Well, do you remember coming to my

21 office and I showed you a registration card from the

22 Sheraton Hotel and in fact your name was on it and th

23 you then remembered that you in fact had made the

24 reservation for Judge Hastings at the Sheraton and th

25 you saw him that night. Do you remember that?

Ross - cross

A No, I don't.

Q You don't remember that at all?

A No.

Q So are you saying that when the FBI interviewed you on November 12, 1981, that you told them about seeing Judge Hastings on September 11?

A Not in the initial interview. In the initial interview, I remember that I saw him for dinner and at the time I didn't remember exactly what day but then I saw you and I showed you my appointment calendar and it was written in there.

Q Do you remember telling the FBI that you thought you had dinner with Judge Hastings at Gusti's in Washington, a restaurant in Washington, on M Street. Do you remember that?

A Not exactly, no.

Q Well, is it fair to say that when the FBI interviewed you in November of '81, you didn't have a good recollection of the evening of September the 11th, is that right?

A Initially, no, I didn't really, you know, think about it or focus on it.

Q All right. And then when you came to my office and we saw your calendar and we saw the

reservation at the Sheraton that you had made for Judge Hastings, then you recalled better; is that right?

A What do you mean by I saw the reservation that I made for Hastings?

MR. WEINGARTEN: May I see Exhibit 11, please?

[Whereupon, the exhibit was handed to Mr. Weingarten by the Clerk.]

BY MR. WEINGARTEN:

Q Do you remember making reservations for Judge Hastings at the Sheraton? Did you call the Sheraton and make reservations for him?

A Yes.

Q All right. And did that fact help you in my office trigger a recollection of the events of that evening?

A Yes.

Q Okay. So just summarizing, on November 11, 1981, you didn't recall going to the Sheraton or you didn't tell the FBI that you had gone to the Sheraton with Judge Hastings; is that right?

A No, I didn't in the initial interview.

Q All right. Later when you came to my office, you did--we talked about making reservations for

Judge Hastings and having dinner at the Sheraton, is that right?

A Yes.

Q Now, did you talk about those telephone calls with me, the telephone calls that you just described?

A I remember talking about the telephone calls, but I don't remember whether it was with you or the other two FBI agents which was only a few days, I mean, it was sometime before I talked to you.

Q All right. Do you recall telling the agents: "Ross stated that she does recall receiving a telephone call from Hastings on September 11, 1981, while Ross was employed by the Datatron Corporation"?

MS. WILLIAMS: Your Honor, I object. That's hearsay.

MR. WEINGARTEN: I am impeaching the witness with her statement, Your Honor.

THE COURT: Is this her statement?

MR. WEINGARTEN: Yes.

THE COURT: Have you shown it to her?

MR. WEINGARTEN: Mark this as the next Government exhibit.

THE COURT: The number?

Ross - cross

MR.WEINGARTEN: 32, Your Honor.

[Government's Exhibit No. 32 was marked for identification.]

BY MR. WEINGARTEN:

Q Miss Ross, I hand you what has been marked as Government's Exhibit 32 which is an FBI summary of interview from November 12, 1981, and ask if you could read the last paragraph, please.

First read it to yourself.

A Okay.

Q All right. Did you tell the FBI that in fact you had received a telephone call from Judge Hastings on September the 11th at Datatron?

A I did not give specific dates when I spoke to the FBI for the first time.

Ross - cross

Q Okay, you were just general and you were vague on dates and you told him that you had telephone contact with Judge Hastings?

A Exactly.

Q Is that because you couldn't remember?

A Yeah, it was partly due to the fact that I didn't know for sure the exact dates. I didn't-- I had not looked in my calendar or anything because I had no idea what specific dates they were interested in or anything and--I usually don't remember dates. That's why I keep an appointment book, and I mark everything down what I do, and when people ask me, you know, what date just off the top, you know, I don't always remember.

Q Well, does your appointment book--your date book--that you brought to my office reflect the three telephone calls that you just testified about?

A No.

Q But are you saying now a year and a half later or approximately a year and a half later that you have a distinct recollection of those telephone calls?

A Yes.

MR. WEINGARTEN: Okay. No further

1 Ross - redirect
2 questions.
3 THE COURT: Redirect?
4 MS. WILLIAMS: Yes, Your Honor.
5 REDIRECT EXAMINATION
6 BY MS. WILLIAMS:
7 Q Ms. Ross, were you distrustful of the
8 FBI when you were interviewed by them?
9 MR. WEINGARTEN: I am going to object,
10 Your Honor.
11 THE COURT: Leading?
12 MR. WEINGARTEN: Pardon me?
13 THE COURT: Leading?
14 MR. WEINGARTEN: Yes.
15 THE COURT: Sustained.
16 BY MS. WILLIAMS:
17 Q Ms. Ross, what was your state of mind
18 regarding the FBI when you went to their offices to
19 be interviewed by them?
20 What was your feeling about the FBI
21 at that time?
22 A Well, I was somewhat mistrustful.
23 Q Why is that?
24 MR. WEINGARTEN: Excuse me, I am going
25 to object. Her state of mind may be relevant. Why

Ross - redirect

she has that state of mind is totally irrelevant.

THE COURT: Sustained.

BY MS. WILLIAMS:

Q Could that have-- Could your state of mind account for the confusion that occurred during that interview?

A Part of it.

Q All right. Ms. Ross, had you ever had dinner with Judge Hastings before the September 11th dinner engagement?

A No.

MS. WILLIAMS: All right. No further questions, Your Honor.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. WEINGARTEN:

Q Ms. Ross, did you tell the FBI that you had dinner with Judge Hastings at Dusty's Restaurant on M Street in Washington?

MS. WILLIAMS: I object, Your Honor, asked and answered.

MR. WEINGARTEN: That's totally in response to the question that was just asked.

MS. WILLIAMS: You asked it and she has

just answered it.

THE COURT: The objection is overruled.

BY MR. WEINGARTEN:

Q Did you understand my question?

A Yes.

Q Did you tell the FBI that you had dinner with Judge Hastings at Dusty's?

A I told him that we had had dinner and they were pushing me for more direct answers.

Q So you just told them Dusty's?

A Well, I remember having dinner at Dusty's. It wasn't with Hastings. I mean, well, at the time I spoke with the FBI-- It wasn't clear in my mind, you know, which restaurant I had been to.

There was no need for me to remember.

MR. WEINGARTEN: Okay. Thank you.

MS. WILLIAMS: Nothing further, Your Honor.

THE COURT: Thank you, Ms. Ross. You may step down.

[Witness excused.]

MS. WILLIAMS: Mike Fales.

Mr. ANDERSON. The next witness' testimony we will offer is that of a woman who is known as Barbara Whiting in 1981, who is today, I understand, known as Barbara Whiting-Wright. Mrs. Wright was one of the coordinators who planned the dinner cruise honoring William Borders for his service as President of the National Bar Association. She was called to testify about various matters concerning the change in dates from October 16 to October 9, 1981. She also had telephone conversations with Judge Hastings on October 9, 1981. Her testimony, both as to the origin of the dinner cruise and her communication with Judge Hastings and the events of October 9th was offered at the 1983 trial. We offer it for the same purpose here.

The CHAIRMAN. It is covered by Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF BARBARA WHITING IN *UNITED STATES v. HASTINGS*

1 it would be possible to either purchase or rent fur
2 coats for you, ladies and gentlemen. Apparently
3 there's no appropriation in the present federal budget
4 for such luxurious items and apparently also there's
5 no method by which--no known method by which this
6 courtroom can be heated at this time. I am very sorry.
7 We have another witness?
8 MS. WILLIAMS: Yes, Your Honor, Barbara
9 Whiting.
10 Thereupon--
11 BARBARA WHITING
12 was called as a witness by the defendant and, having
13 been first duly sworn, was examined and testified as
14 follows:
15 THE CLERK: Would you state your name,
16 please, and then spell your last name?
17 THE WITNESS: Barbara E. Whiting.
18 W-h-i-t-i-n-g.
19 THE COURT: Ms. Williams?
20 MS. WILLIAMS: Thank you, Your Honor.
21 DIRECT EXAMINATION
22 BY MS. WILLIAMS:
23 Q Ms. Whiting, what is your profession?
24 A I am a customs law specialist with the
25 United States Customs Service.

Whiting - direct

Q And where is that?

A In Washington, D.C.

Q All right. And how long have you been a lawyer?

A I have been with the Customs since 1964.

Q Okay.

THE COURT: Are you a lawyer? Are you an attorney?

THE WITNESS: No. I am a customs law specialist.

BY MS. WILLIAMS:

Q A customs law specialist?

A Yes.

Q All right. I apologize for the inaccuracy.

Now, do you know Alcee Hastings?

A Yes, I do.

Q And how long have you known him?

A Since 1969.

Q Are you an affiliate of the National Bar Association?

A Yes, I am.

Q All right. And how long have you been affiliated with that organization?

A Since 1972.

Whiting - direct

Q All right. Did you go to law school?

A Yes.

Q Where did you go to law school?

A Howard University School of Law.

Q And did you graduate from there?

A Yes, I did.

Q Okay. Thank you. Now, were you involved in the planning and the preparation for the gala celebration for Bill Borders?

A Yes, I was.

Q Would you explain to us what the extent of your involvement in the preparation was?

A I was one of the two coordinators.

Q And who was the other coordinator?

A Carolyn Howard.

Q How was the idea for that boat ride conceived?

A At that time I was also the regional director of the National Bar Association for Region 4 which meant that I was on the Board of Governors of the National Bar Association. Following the convention in Detroit, some of us realized that Bill--Mr. Borders--had not been given any type of recognition for the services that he had rendered as president so we

1 Whiting - direct

2 decided in order to cure that matter that we would hold

3 this boat ride that you're referring to in Washington.

4 Q All right. And when was it decided

5 that this boat--what was the original date for this

6 boat ride?

7 A The original date for the boat ride was

8 October 16, 1981.

9 Q And did that date change?

10 A Yes, it did.

11 Q Why did it change?

12 A After the initial letters were mailed

13 out, which they were mailed out on August 24th, it was

14 discovered that the members of the D.C. court system,

15 that is, the judges and all the persons connected

16 with the court system, would be attending a conference

17 in Hunt Valley, Maryland, on that weekend.

18 So that those persons in Washington could

19 participate, we changed from October the 16th to

20 October the 9th.

21 Q When was this change made?

22 A The change was made sometime subsequent

23 to August 24th because it was after I had mailed out

24 the August 24th letter. However, it was not communicated

25 to the sponsors of that boat ride until I sent out a

Whiting - direct

letter on September the 12th, I think--I'm not sure of the exact date.

Q Ms. Whiting, I hand you what's been marked Defendant's Exhibit 5 for identification, please. What is that?

A This is the September 21st letter that I sent out to all the sponsors of the champagne dinner cruise.

Whiting - direct

BY MS. WILLIAMS:

Q Does that letter announce the change in date?

A Yes, it does. And it also gives the reason for that change.

Q All right.

What is that reason that it gives?

A As stated, it says that:

"Please note that the date was changed from October 16th date stated in your August 24, 1981, letter because all of the D.C. Court Judges are going to be out of town on the 16th."

Q All right.

Now, did you compose that letter?

A Yes, I did.

Q And you sent it out to all the sponsors?

A I did.

MS. WILLIAMS: Your Honor, I would move to admit the letter.

MR. WEINGARTEN: No objection.

THE COURT: There being no objection, Defendant's Exhibit No. 5 is admitted.

1 Whiting - direct

2 [Defendant's Exhibit No. 5 was

3 received in evidence.]

4 BY MS. WILLIAMS:

5 Q Now, was it necessary to solicit contri-

6 butions to support this affair?

7 A Yes, it was.

8 Q And were you involved in that?

9 A Yes, I was.

10 Q What process was used?

11 A The October 24th letter that was sent

12 to the sponsors informed them that they had been elected

13 or selected as a group of sponsors for this affair and

14 that they would be assessed $100.

15 Q All right.

16 And how were the sponsors who were going

17 to be assessed $100 determined?

18 A Most of them were members of the National

19 Bar Association Board of Directors that had served under

20 Mr. Borders.

21 There were a few who were not members of

22 the Board but who had worked with the NBA and were very

23 close to Mr. Borders.

24 Q And in which category-- Was Alcee

25 Hastings one of the sponsors?

A Yes, he was.

Q Which category did he fall into?

A He was one of the persons that was not on the Board of Directors at the time.

Q All right. Thank you.

And so did you send him this letter requesting the contribution of $1000?

A I did.

Q Did he respond?

A Yes, he did.

Q And what was the date of the letter where you sent asking for the contribution?

A The date of the letter that I sent was dated August 24th.

Q And when did you receive the contribution from Alcee Hastings?

A His letter was dated, I believe, August the 28th or 27th. I am not sure.

Q Miss Whiting, I hand you what's been marked Defendant's Exhibit 6 for identification, please.

A This is a letter dated August 27, 1981, and it is the original letter that I received from Judge Hastings.

Q All right. So--

1 Whiting - direct

2 You sent out the letter on August 24th

3 and on August the 27th Judge Hastings responded?

4 A That is correct.

5 Q Was a check included in there?

6 A Yes, it was. It included a check for

7 $100.

8 Q All right.

9 Did you speak with Judge Hastings regard-

10 ing this affair?

11 A Yes, I did.

12 Q When?

13 A I don't remember the exact date but it

14 was subsequent to the receipt of his $100 contribution.

15 Q Did you speak with him-- What was the

16 conversation about--excuse me--do you recall?

17 A Not specifically. But generally it was

18 about the boat ride, the invitations and the sponsors

19 who had responded back to my August 24th letter and who

20 had not.

21 Q All right.

22 A It may have included the conversation

23 with reference to the presentation of the awards. I'm

24 not sure whether that took place or not.

25 Q Did there come a time when it was decided

that Judge Hastings should participate on the program during this affair?

A Yes. This was after we had received the responses from the persons attending the dinner which would have been a different mailing from any of these. It would have included the reply card and the check for $40 per ticket.

We made five, I believe it was, presentations that night and the last of those presentations was a plaque that was an etching of the invitation that I had mailed out for the boat ride, and we decided that--and when I say "we," I am talking about the other coordinator--we decided that that award should be presented by someone who was coming from out of town.

After looking over the list of those persons, since Judge Hastings was the highest Federal Judge attending, we decided that he should present that award.

Q Now, when was this decision made?

A It would have been made a few days before the boat ride.

Q All right.

And when was Judge Hastings notified that he would be making this presentation?

Whiting - direct

A I'm not sure if I notified the Judge at all. I called his Chambers on October 8th to more or less confirm that he was coming.

I had received his check for his tickets and at that time I informed the young lady that I was talking to that I was calling him because we had decided we wanted him to present that award. We wanted to make sure that he was there before we sent the program to the printer including his name and she informed me that he was coming and he would be there and she felt he would be very pleased to present that award.

Q Did you make efforts or can you recall whether or not you made efforts on the 9th of October to let the Judge know that he would be making this presentation?

A My memory is a little hazy on that date. Being the coordinator, I was talking to many, many people with reference to tickets, whether or not space was still available.

I believe that I did talk to the Judge. I don't remember exactly when it was. But for some reason I think that I remember he called me and said that his Chambers had informed him that I had called there and he was aware of the fact that I wanted him

1 Whiting - direct

2 to present that award. And I'm not positive of that

3 conversation.

4 Q I understand.

5 Did you know where the Judge was living

6 or housed when he was in Washington on October 9th?

7 A I was told where he was.

8 Q When were you told?

9 A That day.

10 Q That morning, that afternoon?

11 A Probably late that afternoon, just before

12 I went to the boat.

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1 Whiting - direct

2 BY MS. WILLIAMS:

3 Q Okay. Did you say that in addition to

4 the $100 contribution from his sponsors there was

5 another charge for tickets?

6 A Yes, $40 per ticket.

7 Q Did Judge Hastings pay the charge for

8 tickets?

9 A Yes, he did. He sent me a check for

10 $80 for two tickets.

11 MS. WILLIAMS: Would you mark this for

12 me?

13 [Defendant's Exhibit No. 7 was

14 marked for identification.]

15 BY MS. WILLIAMS:

16 Q Ms. Whiting, I hand you for identifica-

17 tion Defendant's Exhibit 7. What is that?

18 A This is a packet of materials. The

19 first item on top is a copy of a deposit slip for the

20 first American Bank. The remainder of the documents

21 are copies of checks.

22 Q Now, how did those copies of checks

23 come in to existence?

24 A I made the copies of those checks?

25 Q Why?

Whiting - direct

A From my experience of handling the type of affairs such as this I always make copies of incoming checks before depositing them into the bank and I do this from my record and this is that record.

Q So that is your practice?

A Yes.

Q All right, now, does that composite of checks show a check from Alcee Hastings?

A Yes, it does, a check dated September 15, 1981, for $80.

Q All right. And that would have been for the purchase of the tickets for the affair?

A That is correct.

Q All right. Now, that boat ride did not take place. Is that correct?

A No. That is not correct. It did take place.

Q It did take place?

A Yes.

Q On the night of October, night of the 9th of October it took place?

A That is correct, October 9.

Q Would you tell us about that, what happened that night?

1 Whiting - direct

2 A The boat ride was scheduled to cast off

3 at 7:30. It was for a gala affair, a black tie affair.

4 The boat would only hold 175 people. We had booked

5 141 spaces. Of course, the boat, the dinner had to

6 take place because I had signed the contract with the

7 company. I had already prepared it and even though

8 Mr. Borders had been arrested that day the dinner was

9 to take place.

10 Q How many people attended?

11 A Somewhere around 100.

12 Q I see. All right, thank you. No further

13 questions.

14 THE COURT: Ms. Williams, do you intend

15 to offer Defendant's Exhibits 6 and 7?

16 MS. WILLIAMS: I did. I believe--I move

17 into evidence Defendant's Exhibit 7.

18 MR. WEINGARTEN: No objection.

19 THE COURT: Six and seven?

20 MS. WILLIAMS: Six and seven.

21 MR. WEINGARTEN: No objection.

22 THE COURT: There being no objection

23 Defendant's Exhibits 6 and 7 are admitted into

24 evidence.

25 [Defendant's Exhibits 6 and 7 were

received in evidence.]

THE COURT: All right, cross examination.

MR. WEINGARTEN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. WEINGARTEN:

Q Ms. Whiting, my name is Reid Weingarten. I am one of the Government attorneys.

This gala affair that was scheduled for October 9, was it to be a surprise for Mr. Borders?

A No, it was not a surprise--well, originally it started out that way, but we decided we'd better let him know in case he decided to do something else. But he knew about it maybe a couple of weeks. I am not sure of the exact date but it was as close as we could hold it without--

Q Did he participate in the preparation and selection of guests?

A The only thing he did was I asked him to give me a list of persons he wanted to send invitations to.

Q And did you follow the list?

A Yes.

Q Okay.

A I--that wasn't the only list. We sent

Whiting - cross

out 450 invitations and they went all over the country.

Q To prominent lawyers all over the country?

A No, lawyers, doctors, judges, even the Chief Justice of the Supreme Court.

Q Did Mr. Borders participate in the selection of Judge Hastings to be a special honorary guest in any capacity?

A No, he did not.

Q The decision for Judge Hastings to make the final presentation was yours?

A Yes, it was.

Q Okay. Was it based on your knowledge of a special relationship between Judge Hastings and Mr. Borders?

A No. As I stated earlier it was based on the fact that the other coordinator and I decided that someone coming from out of town should participate in the program and after looking at that list we decided to select Judge Hastings for that purpose, that position, because of the fact that he was the highest member of the judiciary coming to the affair from out of town.

Q Do you have any knowledge of the

1 Whiting - cross

2 relationship between the two men, Mr. Borders and

3 Mr. Hastings?

4 A Because of my involvement in the National

5 Bar Association I was aware of, you know, their

6 relationship.

7 Q And is it fair to characterize that

8 relationship as close friendship?

9 A I cannot say that. I don't know to what

10 extent that relationship existed.

11 Q Now, I believe you testified that you

12 wanted to confirm, on October the 8th, the day before,

13 that Judge Hastings was in fact coming so that he would

14 be available to make that award. Is that correct?

15 A That is correct.

16 Q Were you confirming because you had

17 heard something that Judge Hastings might not come?

18 A No. The selection of Judge Hastings

19 was not made probably until the 7th or 8th. It was

20 like the last minute when we decided to print a program.

21 Because it really wouldn't have mattered had we not

22 printed the program.

23 And we decided to print the program so

24 at that point I informed the other coordinator I would

25 call him, which was the next day, that Thursday, to,

Whiting - cross

you know, make sure that he was going to be there because I didn't want to print his name on the program and he did not show up.

I have some problems with that.

Q I understand. But the call was not triggered by anything you had heard that he might not come?

A Oh, of course not.

Q Now, I think you were asked on cross examination whether or not you talked with Judge Hastings on October the 9th and your recollection was what?

A I don't remember whether it was October the 9th or whether it was later in the afternoon of the 8th. I vaguely remember, and I believe the Judge called me to confirm that I had in fact called his chambers.

Q Okay.

MR. WEINGARTEN: I asked that this be marked as the next Government's Exhibit. I believe it is 31.

THE CLERK: Yes.

(Government's Exhibit No. 31 was marked for identification.)

Whiting - cross

BY MR. WEINGARTEN:

Q I hand you, Ms. Whiting, Government's Exhibit 31 and ask for you to please identify it.

A This is my response to some questions submitted to me by the Judge.

Q By Judge Hastings?

A Yes.

Q And when were they submitted to you?

A I received them during the Christmas holidays.

THE COURT: This year or last year?

THE WITNESS: This year-- Well, 1982.

Whiting - cross

BY MR. WEINGARTEN:

Q And if you would, what is the eighth question on that list?

A "Did you speak with Judge Hastings on October the 9th, 1981?"

Q And what was your response?

A I said, "No."

Q Was that uour best response at the time?

A At the time.

Q And you answered those questions before you came to court today; is that correct?

A Yes, I did.

Q Okay.

Now, did Judge Hastings attend the dinner on October the 9th?

A No, he did not.

Q Okay.

MR. WEINGARTEN: Thank you very much.

THE COURT: Redirect.

MS. WILLIAMS: No, your Honor, nothing further.

THE COURT: Thank you very much, Miss Whiting. And you may step down. You may leave at this time if you wish or you may remain if you prefer to do

Mr. ANDERSON. The next witness whose prior testimony we would offer is that of Carolyn Lewis. Mrs. Lewis was again in Washington and was the second of the two principal coordinators of the dinner cruise planned for October 9, 1981. She testified at the 1981 trial about her contacts with Judge Hastings, both before and on October 9th, about the dinner cruise and other matters and we offer the testimony she gave at the 1983 trial as her testimony here.

The CHAIRMAN. It is also in Order No. 8 and it will be admitted.

PRIOR TESTIMONY OF CAROLYN LEWIS IN *UNITED STATES v. HASTINGS*

1 Thereupon:

2 CAROLYN LEWIS

3 was called as a witness on behalf of the Defendant and,

4 having been first duly sworn, was examined and testified

5 as follows:

6 THE CLERK: Would you state your name,

7 please, and then spell your last name.

8 THE WITNESS: Carolyn Lewis. L-e-w-i-s.

9 THE COURT: And how do you spell Carolyn?

10 THE WITNESS: C-a-r-o-l-y-n.

11 THE COURT: Thank you.

12 Miss Williams.

13 MS. WILLIAMS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. WILLIAMS:

16 Q Miss Lewis, where do you live?

17 A I live in Washington, D.C.

18 Q And how long have you lived there?

19 A Oh, since about 1958.

20 Q All right. Are you employed?

21 A Yes, I am.

22 Q Where are you employed?

23 A Federal government, the Securities and

24 Exchange.

25 Q Do you know Alcee Hastings?

Lewis - direct

A Yes, I do.

Q How did you meet him?

A I met him through mutual friends.

Q How long ago was that?

A Oh, about twelve or thirteen years ago, I think.

Q All right. On October 9, 1981, did you speak with Alcee Hastings?

A Yes, I did.

Q Did you call him or did he call you?

A He called me.

Q And what did he say?

A Oh, he said, "I'm in town. I'm at the L'Enfant Plaza Hotel."

Probably general conversation like how are you and see you on the boat ride.

Q All right. Now, what time was it approximately?

A It was approximately midday, early afternoon, mid-afternoon; it was somewhere around, I don't know, one, two; it's hard to pinpoint because I didn't make any particular --

Q Okay, and where did you say he was calling from?

1 Lewis - direct

2 A He said he was calling from the L'Enfant

3 Plaza Hotel.

4 MS. WILLIAMS: Thank you, Miss Lewis.

5 I have no further questions.

6 CROSS EXAMINATION

7 BY MR. WEINGARTEN:

8 Q Miss Lewis, my name is Reid Weingarten.

9 I am one of the Government attorneys.

10 Now this telephone call that you testi-

11 fied about in which Judge Hastings said he was staying

12 at the L'Enfant Plaza or he was calling from the L'Enfant

13 Plaza?

14 A My best recollection is he said, "I'm at

15 the L'Enfant Plaza. I'm here at the hotel, the L'Enfant

16 Plaza Hotel."

17 Q And that call was how long ago, October

18 the 9th?

19 A That was October 9, 1981.

20 Q And your best recollection as to the time

21 of the call?

22 A Early afternoon.

23 Q One o'clock?

24 A One, two-ish, somewhere around early

25 afternoon.

Lewis - cross

Q And is it possible Judge Hastings could have said, "I am in Washington. I'm staying at the L'Enfant Plaza and look forward to seeing you," or something to that effect?

A That was probably the gist of the conversation. "I will see you on the boat ride."

MR. WEINGARTEN: Okay. Thank you, ma'am.

THE COURT: Recross.

MS. WILLIAMS: Nothing further, Your Honor.

THE COURT: Thank you, Miss Lewis. You may step down.

(WITNESS EXCUSED)

JUDGE HASTINGS: Paul Snead.

Thereupon:

PAUL SNEAD

was called as a witness on behalf of the Defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your name and then spell your last name, please.

THE WITNESS: My name is Paul Snead. The spelling of the last name is S-n-e-a-d.

Mr. ANDERSON. The next witness we would offer is the testimony of Barbara Katzen. Ms. Katzen was the law clerk scheduled to be Mr. Miller's successor. She had entered her service in October 1981. She had previously served with Judge Hastings as a legal intern. She testified about practices in chambers and law clerks, but she also testified concerning her recollection of having received a call from the judge from the L'Enfant Plaza to his chambers on October 9, 1981. She testified to that at the 1983 trial, one of the calls that is apparently not reflected in the records. We offer her testimony at the 1983 trial as testimony here.

The CHAIRMAN. Again, that is testimony that has been covered by Order No. 8 and will be admitted.

PRIOR TESTIMONY OF BARBARA KATZEN IN *UNITED STATES v. HASTINGS*

1 MS. WILLIAMS: Barbara Katzen.

2

3 Thereupon:

4 BARBARA KATZEN

5 was called as a witness on behalf of the Defendant and,

6 having been first duly sworn, was examined and testi-

7 fied as follows:

8 THE CLERK: Would you state your name and

9 spell your last name, please.

10 THE WITNESS: My name is Barbara Katzen,

11 K-a-t-z-e-n.

12 THE COURT: Ms. Katzen, the amplifying

13 system is not working.

14 THE WITNESS: Okay.

15 THE COURT: So you keep your voice up so

16 everyone can hear you.

17 THE WITNESS: Yes, sir.

18 THE COURT: Fine.

19 DIRECT EXAMINATION

20 BY MS. WILLIAMS:

21 Q Good morning, Miss Katzen.

22 A Good morning.

23 Q Where do you live?

24 A I live at 11106 San Pedro, Coral Gables,

25 Florida.

Katzen - direct

Q How are you employed?

A I am the law clerk to Judge Hastings.

Q How long have you been Judge Hastings' law clerk?

A My appointment was official on October the 1st, 1981.

Q All right. Where did you go to school?

A I went to Nova in Fort Lauderdale.

Q Prior to coming to Judge Hastings as his law clerk, did you work for him in another capacity?

A Yes. While I was in law school, I was a legal intern in his office during the summer of 1980. I worked about forty hours a week all summer and then when school started, I worked during the internship program at Nova, about fifteen hours a week.

Q And with Judge Hastings?

A Yes.

BY MS. WILLIAMS:

Q Now, as a law clerk, what are your duties? What do your duties consist of?

A If a legal issue is presented for resolution to the Court, I prepare a memorandum in written form which would contain an analysis of the position taken by the parties, summary of the cases cited by the

Katzen - direct

attorneys along with Xerox copies, my conclusions and recommendations, and normally I prepare a proposed order.

I put the whole package on the Judge's desk and he, if he agrees with my memorandum and order, he would sign it. If he had any changes he would make it and return it to me.

Q You are going to have to keep your voice up.

A Okay.

Q Okay? In your capacity as either Judge Hastings' intern or as his law clerk, has he ever come to you and said he needed an order immediately?

A Yes.

Q On more than one occasion?

A Oh, probably.

Q Now, when is it you said you came on board as a law clerk for Judge Hastings?

A October the 1st, 1981.

Q Were you replacing another law clerk?

A Yes. I was replacing Jeffrey Miller. We overlapped, however, some few days, or I am not sure how long.

Q Do you remember anything about the pace

1 Katzen - direct

2 of the office affairs during the week of October 5th?

3 A I really don't have any recollection.

4 To me it seemed as though it was a fast pace, but after

5 finishing law school and taking the Bar exam, you're

6 nervous starting a new job and you want to do well and

7 it just seemed that way.

8 Q Did you work on the Romano order, at all?

9 A No.

10 Q Did you inherit Jeff's caseload?

11 A Yes, I did.

12 Q When he left?

13 A Yes.

14 Q But the Romano order was not included in

15 that?

16 A No.

17 Q Do you know anything about the Romano

18 order?

19 A No, I don't.

20 Q Do you receive calls from lawyers regard-

21 ing cases before Judge Hastings?

22 A Yes. They call the office often.

23 Q Do you receive visits from lawyers into

24 your offices?

25 A Yes.

Katzen - direct

Q Regarding cases?

A Yes.

Q How frequently does that occur?

A Very frequently.

Q Both the phone calls and the visits?

A Yes.

Q Have there been instances wherein there were lawyers in the law clerk's area who were not accompanied by a law clerk?

A Yes. It did happen and the reason that I remember is that we finally ended up closing the door to our office so that they would have to announce themselves and we would have to come answer the door so that they wouldn't just walk past the secretary.

Q So, would you say there was open access to the attorneys prior to that move that you just said--

A Oh, yes.

Q Open access to lawyers to the area?

A Yes.

Q All right. Have you ever worked on a memorandum and left the memorandum in the file, itself, in the case file itself while you went to lunch or anything like that?

A Yes, if it was on my desk.

1 Katzen - direct

2 Q All right.

3 A I would put it away in the filing cabinet,

4 then.

5 Q All right, thank you.

6 MS. WILLIAMS: I have no further ques-

7 tions, Your Honor--I have one more question, Your Honor.

8 BY MS. WILLIAMS:

9 Q Barbara, were you in Judge Hastings'

10 in the office on October 9?

11 A Yes, I was.

12 Q Did you receive a phone call from Judge

13 Hastings on October 9?

14 A Yes.

15 Q Do you know from where he was calling?

16 A He told me that he was in Washington,

17 D.C. at a hotel. He gave me his phone number and his

18 room number in case we needed him for anything.

19 Q All right. He gave you a phone number

20 and his room number?

21 A Yes.

22 Q Do you recall approximately what time

23 that was?

24 A It was some time after lunch and prior

25 to three o'clock or so in the afternoon.

Katzen - direct

Q All right. Thank you very much.

MR. WEINGARTEN: May we approach the Bench?

THE COURT: Counsel may approach the Bench.

(Sidebar conference between the Court and counsel as follows:)

MR. WEINGARTEN: Miss Katzen testified about the procedures in Judge Hastings' chambers while he was a law clerk. I think the testimony was that she began on October 1. It is my understanding Judge Hastings heard no more cases after October 9 and I intend to illicit this information.

If there is an objection I want it to be made, objected to and ruled upon outside the presence of the jury.

MS. WILLIAMS: You are objecting to what, now?

MR. WEINGARTEN: I intend to illicit the fact or propose to illicit the fact that Judge Hastings heard no more cases after Borders' arrest and whatever Barbara Katzen was doing as law clerk was probably for other judges.

MS. WILLIAMS: No. She indicated that

Katzen- direct

she interned for the Judge for a period of time.

MR. WEINGARTEN: I think her testimony perhaps is misleading and I think I should be able to establish that after October 9, 1981, Judge Hastings was not her -- or ruled upon cases and heard testimony about her services as a law clerk is the sum of nine days.

MS. WILLIAMS: No.

MR.WEINGARTEN: And I think if there is an objection, it should be made outside the jury so there is no prejudicial evidence before the jury.

THE COURT: Is there an objection?

MS. WILLIAMS: Yes, Your Honor. I object to what he is trying to do. She is testifying to her duties as law clerk and as intern being essentially the same duties.

THE COURT: I think if I understand, could it be handled this way? Could you ask how long she served as Judge Hastings' law clerk?

MR. WEINGARTEN: I think she left the impression she is still his law clerk and started on October 1, 1981.

THE COURT: Is she still being paid by the Government?

Katzen - direct

MS. WILLIAMS: She is still the law clerk.

THE COURT: And he hasn't heard any case since October 9?

MS. WILLIAMS: No. She is still law clerk.

MR. RICHTER: But she hasn't worked for him since October 9 and she left the impression that she did and I would like to elicit that.

THE COURT: I think you may properly do that and I see no basis for objection.

MR. WEINGARTEN: I did want to bring the Court's attention before I did it in open court.

THE COURT: I understand. Her experience in his offices while he was hearing cases was only from October 1st to October 9?

MR. WEINGARTEN: Yes.

MS.WILLIAMS: No.

THE COURT: He hasn't heard a case since October 9?

MS.WILLIAMS: But she worked for him as an intern prior to, and she worked on orders and he would go to her and say--

THE COURT: All right. Will you ask the question and if there is an objection, I will rule on

it.

(Sidebar conference concluded)

THE COURT: Cross examination.

MR. WEINGARTEN: Thank you, Your Honor.

1 Katzen - cross

2 CROSS EXAMINATION

3 BY MR. WEINGARTEN:

4 Q Good morning, Miss Katzen. I believe

5 you testified that you were a legal intern for Judge

6 Hastings during your last year at law school; is that

7 correct?

8 A No, the summer prior to my last year and

9 my last year.

10 Q All right. And you began normally as

11 a law clerk on October 1, 1981?

12 A Correct.

13 Q And assumed all the duties that a law

14 clerk assumed on October 1, 1981?

15 A Correct.

16 Q And is it fair to say from October 1 to

17 October 9 you were Judge Hastings' law clerk?

18 A Yes.

19 Q Have you worked for Judge Hastings since

20 October 9, 1981?

21 A I think I am still his law clerk.

22 Q Have you worked on his cases pursuant to

23 his directions since that time?

24 A I worked on his cases pursuant to other

25 judge's directions.

Katzen - cross .

Q So, it is fair to say that you were working for him pursuant to his direction for eight days as a law clerk, from October 1 to October 9; is that correct?

A As a technically as a law clerk, correct, but when you are an intern, they do similar work.

Q I see. But Judge Hastings didn't hear cases after October 9, 1981?

A Oh, right.

Q So, if you are working as a law clerk since that time, it was for other Judges?

A Sure.

Q Now, the telephone call on October the 9th, 1981, you were in chambers at that time? Is that right?

A Yes.

Q And Judge Hastings called in from the outside?

A Right.

Q Do you have a specific recollection of that call?

A Yes.

Q And when was that call?

A The closest I can remember is that it was

some time after twelve o'clock, probably between one and three o'clock in the afternoon.

Q Okay. So, you are not specific on the time but--

A No, not at all. I am just putting it in between some events.

Q During that call, did Judge Hastings mention the name Bill Borders?

A No.

Q Prior to Bill Borders' arrest, have you ever heard that name in your entire life?

A No.

Q Did Judge Hastings call collect to the office?

A I don't recall.

Q You don't recall. You mentioned a fact a hotel was mentioned.

A He said that he was at a hotel, but I don't recall--

Q Are you 100 percent sure that he said he was at the hotel or staying at the--

A No, he said he was at the hotel.

Q He was?

A I thought he said he was at the hotel, to

1 Katzen - cross

2 the best of my recollection.

3 Q Okay, thank you.

4 THE COURT: Redirect?

5 MS. WILLIAMS: No, nothing further,

6 Your Honor.

7 THE COURT: Thank you, Miss Katzen. You

8 may step down.

9 JUDGE HASTINGS: May it please the

10 Court, Your Honor, we would like to call Phil Edgecombe,

11 please.

12

13 Thereupon:

14 PHIL EDGECOMBE

15 was called as a witness on behalf of the Defendant and,

16 having been first duly sworn, was examined and testified

17 as follows:

18 THE CLERK: Would you state your name and

19 then spell your last name, please?

20 THE WITNESS: My name is Phil K. Edgecombe

21 E-d-g-e-c-o-m-b-e.

22 DIRECT EXAMINATION

23 BY JUDGE HASTINGS:

24 Q Mr. Edgecombe, where do you live, sir?

25 A 2355 Northwest 182nd Terrace, Miami.

Mr. ANDERSON. And to the extent, I would ask that the order of my presentation, I had meant to present the testimony of Mildred Pride at trial at this stage in the proceedings, so if the record will reflect that this is the time, I won't repeat my summary.

The CHAIRMAN. You will change the record to reflect that, so that you can have it presented in the order that you believe most helps Respondent.

Mr. ANDERSON. Thank you, Mr. Chairman.

And actually, I had meant to offer, although I got my notes out of order, the testimony of Mildred Pride at that point. Let me turn to it. She will be the ninth witness we offer. Mrs. Pride was Mr. Pride's first wife. She testified and was cross-examined about matters that bore upon his credibility at the 1983 trial. She testified about the relationship that existed between the judge, Mr. Pride and Mr. Pride's immediate family and concerning reliance Mr. Pride may have placed upon Judge Hastings. She also testified concerning Mr. Pride's reputation for honesty or dishonesty in the community, her testimony was offered and, again, we submit the testimony that she presented at the 1983 trial of Judge Hastings.

The CHAIRMAN. Is there objection to Mildred Pride's testimony?

Mr. BARON. Was that covered by the 8th order?

The CHAIRMAN. Yes, it is.

Mr. BARON. OK.

The CHAIRMAN. It will be admitted.

PRIOR TESTIMONY OF MILDRED PRIDE IN *UNITED STATES v. HASTINGS*

Pride - direct

Thereupon--

MILDRED PRIDE

was called as a witness by the Defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your name, please, and then spell your last name?

THE WITNESS: Mildred Pride, P-r-i-d-e.

JUDGE HASTINGS: Madam Clerk, do you know if the microphone is working?

Generally I don't need it but other parties might.

[Discussion off the record.]

JUDGE HASTINGS: May it please the Court?

DIRECT EXAMINATION

BY JUDGE HASTINGS:

Q Mrs. Pride, state your address for the ladies and gentlemen and his Honor, if you will.

A My address is 4443 Bethel Church Road, Columbia, South Carolina.

Q Since the microphone isn't working, maybe you can push it down and you won't have to try to put your eyes up above it.

Pride - direct

Thank you very much.

How long have you lived in Columbia, South Carolina?

A Approximately twenty years.

Q And what caused you to begin living there?

A Initially I went there to seek employment in the School District there.

Immediately following that, I met Mr. Pride whom I was thereafter married to.

Q All right.

And are you presently employed, Mrs. Pride?

A Yes, I am.

Q And what kind of work do you do, ma'am?

A I am still with the School District there and I serve as Middle School guidance counselor.

Q All right.

And insofar as your marriage to Mr. Pride, did there come a time when that terminated in a divorce?

A Yes, it did.

Q And how long ago was that?

A In 1976.

Pride - direct

Q Do you have a child as a result of your union with Mr. Pride?

A Yes, I do.

Q And what is his name?

A His name is Hemphill Pride, III.

Q All right.

And am I in part related to that young man?

A Very much so.

Q And in what way?

A Judge Hastings is my son's godfather.

Q Now, Mrs. Pride, do you know the relationship and did you know the relationship that existed between Mr. Pride and myself and his family, Dr. and Mrs. Pride?

A I did, yes.

Q All right.

Let me ask you a very personal question, if I may.

When you and Mr. Pride had--Hemphill - that is--had difficulties, do you know of any circumstances where his family would call me to assist in resolution of same?

A Oh, yes. Yes, I do.

1 Pride - direct

2 On many occasions when there were family

3 problems with us, Mr. Pride's family in turn interceded.

4 They believed in Judge Hastings. They trusted him.

5 And from time to time, they would make a long distance

6 call and ask him if he would talk to his friend, Mr.

7 Pride.

8 Q All right.

9 A Yes.

10 Q Now, through the years, would you say

11 that so far as you know that that relationship where

12 Mr. Pride relied upon me continued?

13 A Yes, yes, I would.

14 Q How would you describe the relationship?

15 Just describe it for the ladies and gentlemen.

16 A I would describe it as a very trusting

17 relationship, a very supporting relationship, a caring

18 one where Judge Hastings always cared not only about

19 Mr. Pride and himself but all those of us who were -

20 closely related in his life.

21 Q Do you have any recollection of his

22 relying upon me for advice personally?

23 A Oh, yes. Yes, I do.

24 In cases of importance that he needed

25 advice pertaining to perhaps a business transaction

1 Pride - direct

2 and, as I mentioned already, personal situations, per-

3 sonal concerns concerning his family, things of conse-

4 quence.

5 Q All right.

6 A Mr. Pride always needed some reinforce-

7 ment from his friend.

8 Q Mrs. Pride, be kind enough, if you will,

9 to tell us, since the six years have passed with regard

10 to your knowledge being divorced from him, am I correct

11 in that you still have lived and maintained your resi-

12 dence and employment in Columbia, South Carolina? Is

13 that correct?

14 A Yes, I have.

15 Q Now, during the course of your marriage

16 to Mr. Pride, you and he had mutual friends, I gather?

17 A Yes, we did.

18 Q And are many of those persons still

19 living in the South Carolina area?

20 A Yes, they are.

21 Q And do you, on occasion, either socially

22 or business or otherwise, come in contact with some of

23 those persons?

24 A Yes.

25 Q Would you say on a rather frequent basis

1 Pride - direct

2 that you do, as time permits?

3 A As time permits and from time to time,

4 we do come in contact.

5 Q All right.

6 Then is it fair to say that you would

7 know a little, aside from your personal experiences,

8 of Mr. Pride's reputation in the community of South

9 Carolina?

10 A I would say "yes."

11 Q And, Mrs. Pride, a very difficult ques-

12 tion but one I must ask you:

13 Do you know Mr. Pride's reputation for

14 truthfulness or untruthfulness?

15 A Personally? I'd say untruthful.

16 Q All right.

17 A On many occasions, yes.

18 Q Well, aside from personal, because I

19 think--

20 A Okay.

21 Q --a scorned wife might be thought to

22 believe that.

23 A Yes. I--and I am feeling that way right

24 now.

25 Q All right.

Pride - direct

A Mr. Pride and I had a very stormy divorce and, although he recognized and experienced a great deal of success during his years as an attorney in South Carolina, during that time he made many, many friends; he also made some enemies, quite a few enemies. And from that camp, I am sure--I am positive that they would say that he is dishonest.

However, I do know others who have remained or maintained a relationship with him.

Q All right.

A And they are experiencing difficulty in believing and trusting him.

1 Pride - direct

2 BY JUDGE HASTINGS:

3 Q Mrs. Pride, can you think of any reason

4 that you would know of that Hemphill Pride would do

5 anything to hurt me?

6 A I cannot. I really cannot.

7 MR. WEINGARTEN: No questions, Your

8 Honor.

9 THE COURT: Thank you very much,

10 Mrs. Pride. You may step down.

11 [Witness excused.]

12 THE COURT: Call the next witness.

13 We will have to proceed and hopefully

14 this problem with the sound system can be remedied

15 during our mid-morning recess.

16 JUDGE HASTINGS: Thank you, Your Honor.

Mr. ANDERSON. The next testimony, I believe we are up to 17, the next testimony we will present by prior testimony is Alvoyd Merritt. Mr. Merritt was Judge Hastings' uncle. He testified at the trial that, on October 9th, Judge Hastings' mother, Mildred Hastings, had called and asked him to come over. He was present in the Hastings' apartment complex during this period. He observed Mrs. Hastings and her mental state, he also observed other persons who came to the apartment that day and the events as they developed on the afternoon of October 9th, and his testimony tends to corroborate the events as they were reported by Mrs. Hastings and bring additional information to bear. We offer his testimony following Mildred Hastings. It was offered at trial and we offer it here.

The CHAIRMAN. It will be admitted.

PRIOR TESTIMONY OF ALVOYD MERRITT IN *UNITED STATES v. HASTINGS*

Merritt - direct

Thereupon--

ALVOYD MERRITT

was called as a witness by the Defendant and, having been first duly sworn, was examined and testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: Alvoyd Merritt.

THE COURT: Thank you. You may be seated.

Your name again, sir?

THE WITNESS: Alvoyd Merritt, A-l-v-o-y-d M-e-r-r-i-t-t.

THE COURT: Thank you very much, sir.

Ms. Williams?

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Mr. Merritt, where do you reside?

A In Fort Lauderdale, Florida.

Q And what is your relationship to Alcee Hastings?

A He is my nephew.

Q And what is your relationship to Mildred Hastings?

Merritt - direct

A Mildred Hastings is my sister.

Q Now, Mr. Merritt, do you visit your sister on a pretty regular basis?

A I do not as much as I would like to, but I visit her as much as I can. She is crippled.

Q Okay.

A And I call her when I can't go over.

Q Does she go out very frequently?

A She don't go out hardly at all now.

Q Who takes care of her needs outside of the house, do you do that?

A No. Alcee do.

Q Now, do you know Hemphill Pride?

A Not too much. He is my nephew's friend.

Q All right.

What about Bill Borders?

A The same thing, he is my nephew's friend.

Q But you don't know very much about him?

A No, I don't know anything about him.

Q I would like to talk about the day of October 9th.

Did you see your sister on October 9th?

A Yes. She called me.

Q And what did she say?

Merritt - direct

A She was very upset, extremely upset, and she told me to come over.

Q Did you go over?

A I went over.

Q About what time was it when you got there?

A In the evening, late evening.

Q Late evening?

A It was getting about dark, nearly dark.

Q So it was early evening; it was just getting dark?

A Yes.

Q All right.

When you arrived there, what did you see?

A At the gate, I saw a crowd of people, more than usual. I usually see one or maybe two when I go there. But there was a large crowd there this day when I went over, and I was wondering what was wrong.

Q Did the crowd upset you?

A A little bit. Not too much. Until I got to her apartment.

Q All right.

What was happening there?

Merritt - direct

A There was a larger crowd. I had trouble getting in the door.

Q Did you have to push your way through?

A Yes, I did. There was so many, really, there was so many.

Q All right.

When you got inside, what was your sister's condition?

A Oh, she was extremely upset, crying, shaking like a leaf and kind of made me upset, too.

Q All right.

Now, you said there were a lot of people outside.

A Outside knocking and the phone was ringing.

Q Did you answer the phone?

A I anssered it once or twice, yes.

Q WHo was calling?

A They announced themselves as reporters asking for Al.

Q What did you tell them?

A I told them he wasn't in.

Q Okay.

Did I visit-- Were you there when I

visited?

A Yes. You came in a while after I was there and fixed us a little drink and you saw that things, you know, were a little under control but not much, and you left.

Q All right.

Now, did the noise go away outside or did it persist and get worse?

A No, they were constantly banging and the phone was ringing. It was a rough time.

Q What about trucks, did trucks start--

A Yes, there was some TV trucks, I assume they was, shining lights on the door and they even knocked a hole in the wall out there. I saw it the next day.

Q They knocked a hole in the wall?

A In the wall, yes.

Q Were there any visitors while you were there?

A Yes. The FBI came up knocking on the door.

Q Did they identify themselves as the FBI?

A Yes. One of them showed a badge.

Q All right. Go on.

Merritt - direct

A And I let them in.

Q Okay.

What did they want?

A They wanted to see Al.

Q And what were they told?

A They were told he was not there but he was on his way home.

Q Okay.

Did they leave a card?

A No, they didn't leave a card.

Q Or telephone number or anything?

A They didn't leave anything, no.

Q Did they say they would come back?

A No, they did not.

Q Did they leave any message for him?

A No, they did not.

Q Did you all finally-- Did you hear from Al while you were there?

A Yes.

Q Where was he?

A He was at the Fort Lauderdale Airport.

Q And what did he say?

A He called and I answered the phone.

Q Did you speak with him?

Merritt - direct

A Yes. And he said he would be right home because then I hadned the phone to my sister.

Q Oh, and then she spoke with him?

A Yes, she did.

Q Then what happened, did he come home?

A Yes, he came home.

Q And how was he?

A Well, he was doing fine. He was doing fine. And he stayed around for a while to see was we doing all right.

Merritt - direct

Q Was your sister getting a little better by now?

A A little better, yes. A little better, yes. After seeing him, yes, she was better.

Q All right.

And then what happened?

A Then he gave her your phone number and address and told her that if anyone wanted him where he could reach you at.

Q You saw him do that?

A Yes, I did.

Q Did anyone want to reach him later on?

A No.

Q All right.

Did the FBI come back or call later?

A Yes.

Q And what happened? Which did they do, first of all, did they come back or did they call?

A I was so mixed up, I have forgotten which way that was. Mind you, I was mixed up, too.

Q All right.

Do you know whether or not your sister gave them the address and phone number that Al had told her to give to them?

A I'm not sure of that. I'm not sure.

Q You're not sure. Okay.

Did you hear from Al later that evening?

A I don't know.

Q You don't recall?

A I don't recall, really.

Q Okay.

And you don't remember whether or not your sister gave the information that Al had asked her to give?

A Oh, yes, she did. On the phone.

Q On the phone? To whom? Who did she give the information to?

A I'm not sure.

Q You don't recall? Okay.

MS. WILLIAMS: I have no further questions, your Honor.

THE COURT: Cross examination?

MR. WEINGARTEN: Yes, your Honor.

CROSS EXAMINATION

BY MR. WEINGARTEN:

Q Mr. Merritt, my name is Reid Weingarten. I am the Government's attorney in this case.

A Yes.

Merritt - cross

Q And I am just going to ask you a few questions.

A Yes.

Q Is it fair to say that October 9th, this Friday, was a terribly confusing, mixed-up day for you?

A That evening, yes.

Q It was an evening like no other evening you have ever experienced, is that right?

A I wouldn't say that.

Q You have had other evenings like that?

A Yes.

Q Okay.

Do you work, sir?

A Yes.

Q Were you working that day?

A Yes.

Q What time do you get off work?

A I have no special time.

Q Do you remember working that day, October the 9th, 1981?

A Yes.

Q Did you go to your sister's house from work or from home?

A I went from home.

Merritt - cross

Q And had you finished working that day?

A Yes.

Q Does that help establish what time it was?

A What time it was?

Q Yes.

A Not necessarily so. I run my own store. I don't carry a time clock.

Q Okay.

So do you know what time it was when you got there?

A Yes.

Q What time?

A It was getting dark, getting dark.

Q So if it was October, 6:00 or 7:00?

A I don't recall any times. I don't work by a time clock.

Q Okay.

Did you say there were TV lights out there?

A Yes.

Q So that it was dark requiring lights?

A I didn't say it was dark. I said it was getting dark.

Merritt - cross

Q When the TV lights were turned on, do you remember it being dark then?

A Why should I remember that?

Q I don't know. I thought maybe that would help.

A I don't recall that.

Q All right.

Now, which happened first, the FBI got there or Judge Hastings arrived?

A The FBI got there first.

Q And that's your best recollection?

A Yes.

Q And then Judge Hastings arrived?

A Yes, right.

Q Now, I think you have testified that the phone was ringing a million times, it just kept ringing and ringing and ringing.

A I didn't say a million times. I said quite often.

Q Quite often. A whole lot of times?

A Yes.

Q And did the telephone stop ringing once Judge Hastings arrived?

A Not necessarily so.

Merritt - cross

Q I thought your testimony was that after Judge Hastings arrived and left with Patricia Williams and left Patricia Williams' number that nobody called. Was that your testimony?

A I wasn't asked that.

Q Well, once Judge Hastings left and left Patricia Williams' telephone number, did anyone come?

A Alcee came.

Q After that.

A After the FBI--before the FBI.

Q Okay.

What happened first, the FBI or Judge Hastings' arrival?

A The FBI came.

Q And then what happened, Judge Hastings arrived?

A Right.

Q And then Judge Hastings left?

A Right.

Q And then did anybody arrive after that?

A I can't recall that.

Q And did anyone call after that?

A Well, the phone was ringing practically all night.

Merritt - cross

Q All right.

Did the FBI call back that evening?

A I don't recall that.

MR. WEINGARTEN: Okay. Thank you, sir.

THE COURT: Redirect?

MS. WILLIAMS: No, no further questions, your Honor.

THE COURT: Well, thank you, Mr. Merritt. You may step down, sir.

[Witness excused.]

Mr. ANDERSON. The final witness we offer through prior testimony is offered for a very limited purpose. Frank Romano was still alive in 1983, he was called to testify at the trial, as well as Agent Paul Rico. He was called to take the stand, he acknowledged that he was the Frank Romano who had been a defendant before Judge Alcee Hastings and he was simply at the end of that asked to stand and face the jury so that they could compare themselves the extent to which anyone dealing with Paul Rico, who had access to the judge, could believe that Paul Rico was Frank Romano. So the point is made, we offer his testimony so that the Senators may know that that occurred.

The CHAIRMAN. Again, that is covered by Order 8 and it will be admitted.

PRIOR TESTIMONY OF FRANK ROMANO IN *UNITED STATES v. HASTINGS*

1 THE COURT: Sorry for the delay,
2 ladies and gentlemen. Apparently this machine cannot
3 be fixed. They are sending two, I don't know,
4 from Schenectady, New York, or some such place for
5 some technician and we'll have to carry on as best we
6 can without an amplifying system. If it becomes too
7 much of a problem we'll just have to move, but hope-
8 fully, that will not be necessary.
9 May I just say if any of you cannot
10 hear a witness or lawyer or me, will you just raise
11 your hand, and if I happen to be looking at my notes
12 instead of at you, just say, "Hi," or something. All
13 right?
14 The defense may call the next
15 witness.
16 MS. WILLIAMS: Thank you, Your Honor.
17 Frank Romano.
18 Thereupon:
19 FRANK ROMANO
20 was called as a witness on behalf of the defendant and,
21 having been first duly sworn, was examined and testified
22 as follows:
23 THE CLERK: Would you state your
24 name, please, and spell your last name?
25 THE WITNESS: Frank Romano,

Romano - direct

R-o-m-a-n-o.

THE COURT: Mr. Romano, you may be seated. The amplifying system is not working so you speak as loudly as you can so that everyone can hear you. Thank you.

THE WITNESS: Will do.

THE COURT: Mrs. Williams.

MS. WILLIAMS: Thank you, Judge.

DIRECT EXAMINATION

BY MS. WILLIAMS:

Q Mr. Romano, where do you live?

A Right now, I'm living in California.

Q How long have you lived in California?

A A little over a year.

Q Were you a defendant in a trial before Judge Alcee Hastings? Were you a defendant in trial before Judge Alcee Hastings?

A Yes, I was.

MS. WILLIAMS: I have no further questions. Thank you.

MR. RICHTER: No questions, Your Honor.

THE COURT: Thank you, Mr. Romano. You may step down.

MS. WILLIAMS: Neal Sonnett, please.

Mr. ANDERSON. Mr. Chairman, that ends the Respondent's presentation of prior testimony. It is the Respondent's intention that his next and final witness be Judge Alcee Hastings. We would like, as I have indicated, that his testimony be presented on a day when it can be begun and hopefully ended and, frankly, I need some time to complete my preparations for that. I would like him to testify fresh.

At this point, I will represent he is our last witness, subject to cleaning up whatever exhibits there may be at the end of his testimony, we anticipate that the Respondent will rest. I would ask that we be given until 9 a.m. tomorrow to begin the testimony.

The CHAIRMAN. Mr. Anderson, just so that we are very clear on the record, according to the notes that I have made, taking the document that you submitted to us as of July 24th, entitled "Tentative Order of Witnesses for Respondent," there are 11 people on that order that were cited as people that would possibly be called as witnesses and I just want to be clear that each of those, a determination has been made not to call them.

Let me just read through the list, as I have it, so that we have no errors in our understanding: John Crump is listed as your No. 18, Warren Hope Dawson——

Mr. ANDERSON. May I just respond briefly, Mr. Chairman?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. John Crump was primarily to offer authenticating information about the National Bar Association documents. The House has graciously agreed that those can come in without authentication.

The CHAIRMAN. All right. You determined, I gather, also not to call Warren Hope Dawson? I am just trying to get current with that.

Mr. ANDERSON. That is correct. He would have been primarily a character witness and we think we have enough of that.

The CHAIRMAN. Also, James Cobb, you've made a determination not to call?

Mr. ANDERSON. That is correct.

The CHAIRMAN. Dudley Williams.

Mr. ANDERSON. That is correct.

The CHAIRMAN. Norma Stallworth.

Mr. ANDERSON. I would love to call her, but no one can find her.

The CHAIRMAN. The Honorable William Hoeveler.

Mr. ANDERSON. Hoeveler.

The CHAIRMAN. Hoeveler.

Mr. ANDERSON. Judge Hoeveler would be a rainmaking witness. I think the committee has taken notice that it exists and we didn't think it was necessary to bring him up here.

The CHAIRMAN. Roger Spaeder.

Mr. ANDERSON. We have elected not to call Mr. Spaeder.

The CHAIRMAN. I believe earlier you stated to the committee your decision not to call Carolyn McIver.

Mr. ANDERSON. That is correct, we are satisfied.

The CHAIRMAN. Steven Allen.

Mr. ANDERSON. It will remain one of the mysteries of this case. The Allen file, which was so prominently discussed elsewhere, is yet to be discovered. Mr. Allen is now Mr. Baron's partner and,

without some information of what was in that file, I am unwilling to call him and take a chance.

The CHAIRMAN. Reid Weingarten.

Mr. ANDERSON. We have made the decision that, again, in the absence of the prosecution memorandum, I would be a little reluctant to put him up cold.

The CHAIRMAN. Edward B. Shohat.

Mr. ANDERSON. The point was noted that Mr. Shohat was Neal Sonnett's partner. His opinion is in the materials submitted to the House and I had hoped to have a substitute, but the logistics didn't work out. Yes, we have released Mr. Shohat.

The CHAIRMAN. So, your preference at this point would be to go forward early tomorrow with Judge Hastings as your final witness, as I understand it.

Mr. ANDERSON. That's right. Mr. Chairman, when I resist a procedure, I really resist it; when I embrace it, I really embrace it. We would like to put Judge Hastings on and call it a case.

The CHAIRMAN. I think the committee would be inclined—I have discussed this with Senator Specter—we would be inclined to defer to that request if we can have a real assurance that between now and 9:00 tomorrow we will not identify additional witnesses that should be called as part of Respondent's case.

Mr. ANDERSON. Short of William Borders walking up here to me and saying let's go, you have my——

The CHAIRMAN. If you understand Mr. Borders wishes to testify, we would be glad to hear his testimony.

The VICE CHAIRMAN. If I may amplify what the Chairman said, the concern which we have is that we will be able to conclude the case by the end of work on Friday. We still have about an hour and 35 minutes we could proceed today, so what I think is appropriate is we receive assurance from counsel that, if we do not use this time, that we will in fact be able to conclude this matter by the end of work on Friday.

Mr. ANDERSON. Mr. Chairman, I see no problem. I would obviously—and I realize the House is still evaluating its position and likes to receive as early as possible notice about any rebuttal witnesses, but at this stage I think we will have completed our case, counting today as a full day chargeable to us, within five days. Yes, I expect that when Judge Hastings——

The VICE CHAIRMAN. Four days from today?

Mr. ANDERSON. No, we will complete our case tomorrow—I mean I expect to complete Judge Hastings' direct and redirect by tomorrow, at which point our case will have been done.

The VICE CHAIRMAN. So, it is your expectation that we will be able to conclude the matter by the end of work on Friday?

Mr. ANDERSON. Unless there is—again, I would need to know whether they want to present rebuttal, but I see no problem whatsoever.

The VICE CHAIRMAN. Congressman Bryant, do you concur?

Mr. BRYANT. Senator Specter, we can't estimate how long it might be required until we see how long the direct examination is going to be and, of course, until we see. He says we have no idea what new issues might be raised by his testimony. I think we will

be through by Friday. I can guarantee you the desire that we finish at this table is as intensive as it is at that table up there.

The VICE CHAIRMAN. That is good enough for me.

Mr. ANDERSON. Mr. Chairman, at the earliest possible moment—and I don't wish to impinge upon the matters, but if we could have some idea of who we may anticipate as rebuttal witnesses and how many, it would help my preparations so that I can come in and facilitate the closing out of the process.

The CHAIRMAN. Let me mention one other item. We will plan to do that and begin testimony with Judge Hastings in the morning at 9 o'clock, but there is one other procedural matter that is pending before the committee and I think it would be glad to hear argument on very briefly from both counsel before we recess this afternoon and then the committee can deliberate on it, and that is the motion to strike a proffer by the House of Representatives in connection with the testimony of Mayor Stephen Clark.

Mr. Anderson, you filed the motion to strike, so perhaps you could go first and give your arguments in favor of that motion to strike, then we will call on the House Managers to argue the reasons the motion should not be granted.

RESPONDENT'S MOTION TO STRIKE HOUSE MANAGERS' PROFFER RE: TESTIMONY OF STEPHEN CLARK

Mr. ANDERSON. Mr. Chairman, let me start out. This motion was prepared before I made what may have been counsel's error of leaving in a document a reference to a polygraph examination. I am of two positions on here. I would move that the reference in the one exhibit, the May 1 memorandum, to a polygraph simply be redacted and would then persist that there should be no intrusions of polygraph examinations in this case.

I think the law on that is quite clear. The *Hall* case in my view does not support the House's position and it does not simply because there you had a polygraph examination of an accused which had come back either inconclusive or false, where the accused was attacking the inadequacy of the prosecutor's decision not to pursue lines, it had not identified lines that could have been pursued.

Here you do not have a polygraph examination of an accused, you have a polygraph examination of a crucial witness. Its real purpose in being offered is to try and lend credibility to that witness. Here you also have a case in which, although we haven't pursued them, we certainly have proffered them, there are numerous other lines of inquiry that could fairly have been pursued.

I was inclined to not pursue this matter, through difficulty, because, frankly, in my own view, looking at the record, given the way the record has developed, it seems to me that the testimony and evidence that has been presented concerning Mayor Clark and his credibility ought to confirm the Senate's legislative judgment that polygraphs aren't worth much, but I believe as a matter of law the committee's decision was correct, that the committee's decision was correct to simply backdoor the matter through a proffer, which in my view overstates that the results of the polygraph exam was improper.

Let met say, in addition, that if the committee decides this should come in, we have still not received underlying information concerning the manner and conduct of that polygraph examination, and if it is going to come in for any purpose, I think the defendant is entitled to what we have identified through our proffer to the House are the documentation, instrumentation and information concerning the observations of the witness under examination that should be provided to enable us to challenge the foundation of the specific examination.

My points, thus, are what I would urge the committee is redact the reference to polygraph examinations in the one memorandum I submit, strike the proffer and leave the record pristine of polygraph examinations.

If the committee thinks that the proffer or material on polygraph examinations is proper, I would ask that it direct that we be provided with the report of the FBI polygrapher who conducted that, so that we may be prepared to meet the matter. I think this would involve some needless time and I don't think it is necessary, but that is our position on the polygraph. We think the committee was correct and we don't think it should have been interjected. Running a little too fast, I didn't redact the one piece I probably should have in that memorandum. If the committee views that it is before you, fair enough, and we will proceed from there.

The CHAIRMAN. House counsel can give the House managers' point of view.

Mr. BARON. Mr. Chairman, when the committee ruled that we could not introduce the polygraph evidence for purposes of proving the veracity or lack thereof of Mayor Clark, I think it is fair to say we adhere to that. I don't think any witness who was familiar with the fact of the polygraph examination and its result in any way alluded to it.

By virtue of the fact that the Respondent has a major theme of his defense on that article, relates to what he contends is an inadequate, misdirected investigation by the Federal Bureau of Investigation, and based on our research we felt that it was appropriate to make a proffer, to offer the results of the polygraph for the very limited purpose of showing what investigative steps the FBI had taken and what they therefore would do as a result of the information they learned as an investigative tool from the polygraph.

We believe, for example, that if Mayor Clark had failed the polygraph test, I think it would have had a drastic impact on perhaps some other alternatives that the FBI might have explored. It is certainly relevant to that question.

Now, if that information were being offered to an unsophisticated jury, I think one might conclude the chances of them not being able to draw the distinction between the examination being offered for bearing on the truth of the witness as distinguished from the conduct of the investigation, I think the point might be well taken. But it is being offered to the members of the United States Senate, many of whom are lawyers and all of whom, I am sure, sophisticated enough to draw the distinction between the purposes for which it is being offered.

Now, with regard to the *Hall* case, which is a criminal case, and I think literally the court uses this phrase, "you cannot have your

cake and eat it, too." You can't, on the one hand, attack the conduct of an investigation and at the same time say you can't put in the evidence of what the investigating agency did and how that bore upon the way they conducted the investigation. That is what *Hall* said. We are saying the same thing here. If there is going to be an attack on the way the FBI conducted its investigation of the wiretap leak, it seems to me you are entitled to know and should know what investigative steps did they take, no matter what they were, and what impact that would have on how they conducted that investigation.

Now, we would note, of course, that Judge Hastings—counsel says it was in error, and I accept that—Judge Hastings did put in a memorandum which made specific reference to the polygraph examination. I don't want to play the game of, "Hi, you've opened the door, you know, and it can't be closed again," but that did occur.

Finally, the statement that the House has been unable or unwilling to provide this information to Judge Hastings concerning the way the polygraph test was conducted is simply, flatly incorrect. It is true that during the House hearings Mr. Anderson requested certain information. We obtained that information, we provided it to him, and indeed we reprinted it in the volume of the hearings. It literally appears in the back of this volume which came out last year.

If I may, he had asked for the identification of the polygraph operator. His resume is provided here, and my memorandum to the members of the Subcommittee on Criminal Justice, dated July 8, 1988, specifically refers to an interview which was conducted in response to the request by Judge Hastings' counsel or information regarding the test and for an opportunity for his expert to review the FBI polygraph records. The questions that were asked by Mr. Anderson are laid out here, as are the responses, so his point is simply not well taken. We did provide that information to him last year, we published it in the volume of the proceedings.

The VICE CHAIRMAN. Mr. Bryan, isn't the narrow issue now before this committee whether there will be a striking of your proffer?

Mr. BRYAN. That's correct.

The VICE CHAIRMAN. So, do we have to get involved in the merits of this issue again?

Mr. BRYAN. Only because these are the points that were raised by the Respondent in support of his motion to strike. I am really responding to his points, point by point. One of his——

The VICE CHAIRMAN. So, you think that his arguments were irrelevant and you're making responsive arguments?

Mr. BRYAN. He raised as grounds, one of the grounds——

The VICE CHAIRMAN. All we have is the issue of a pleading, whether your pleading will stay in the record as a pleading.

Mr. BRYAN. Correct.

The VICE CHAIRMAN. And now we are having a reargument of the substantive issue again, are we not?

Mr. BRYAN. It's Respondent's motion, Senator, and I feel obligated to respond to the points that he has raised. Frankly, I have never heard of a pleading being stricken in this type—in a court proceeding.

The VICE CHAIRMAN. That's a pretty good argument, but is that what it is all about, period?

Mr. BRYAN. Ultimately, yes.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. Are there other questions by any member of the committee to Mr. Baron?

[No response.]

If not, I think——

Senator PRYOR. Mr. Chairman?

The CHAIRMAN. Senator Pryor?

Senator PRYOR. I have no questions, but an observation. Senator Leahy and I have attended a luncheon meeting today, when we went over the agenda of this week's Senate calendar, and at last count I think there is some 75 amendments to the Department of Defense authorization bill, there is the savings and loan bill which must be dealt with before we break for our recess, presumably Friday night. There are two or three other major matters to be considered and I am just stating to counsel that they may take this under consideration as they prepare their next few days' case, because I imagine we will be going back and forth for a lot of votes. That is just an observation.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. I think Senator Pryor raises a very good point and I would just make an observation publicly, rather than privately. To the extent that we are able to get votes compressed into a time of the day late tomorrow, in fairness to the Respondent, I think that tomorrow is a very important day for Judge Hastings. He is going to be put on the stand and he is going to be put through his direct testimony by his counsel, and if you start bifurcating that every 20 or 40 minutes, I think it is probably bordering on being unfair, so I hope that the leadership would recognize that, to the extent that we are able to let Judge Hastings, as probably in my view the key witness in this entire matter, take that stand and subject himself to direct and cross-examination without being interrupted every 15 or 20 minutes. I fear if he is, that we are going to have a hard time following the—I hope that the leadership will understand that and that we can do that tomorrow.

The CHAIRMAN. I think that is a good point and I will make that point to the leadership and perhaps Senator Specter can do the same and, any other members of the committee that would like to, I think that is an excellent point.

I think if we could start at 9 tomorrow, obviously the chance of votes increases as the day progresses, so the more work we can do in the morning, the better off for all of us.

Is there any reason we cannot recess now until 9 tomorrow?

Mr. ANDERSON. I just put on the agenda—it need not be addressed now, but I don't want to lose it in the shuffle—I had urged and would like the opportunity again, in light of the evidence, as a separate appendix or exhibit, the record in *United States* v. *Hastings* be printed so that it would be available for comparative purposes for the Senate. Your 8th order or 9th order—I forget which it is—invited me to revisit that question after the committee had had an opportunity to see it. Before we all go home on Friday, I would

like to keep that as an open issue, where I might have the opportunity to address you.

The CHAIRMAN. We will consider that issue. It has been argued to us before and we appreciate you mentioning it again.

We stand in recess until 9 in the morning.

[Whereupon, at 4:10 p.m., the committee was adjourned, to reconvene on Tuesday, August 1, 1989, at 9 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

TUESDAY, AUGUST 1, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:13 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant and Gekas.

Counsel Present: Terence J. Anderson, Patricia Graham Williams, Robert S. Catz, Lewis Myers, Jr., Sue Ann Hochberg, and Charles Francis, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, Assistant Special Counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

At this time, would counsel for respondent call its next witness?

Mr. ANDERSON. The respondent calls the Honorable Alcee L. Hastings.

The CHAIRMAN. Judge, you are still under oath from the earlier appearance.

Judge HASTINGS. Thank you, Mr. Chairman.

Mr. ANDERSON. Good morning, Your Honor.

TESTIMONY OF JUDGE ALCEE L. HASTINGS

DIRECT EXAMINATION

Judge HASTINGS. Good morning. Your mike isn't on.

Mr. ANDERSON. Did you sleep well?

Judge HASTINGS. I slept well, Mr. Anderson.

Mr. ANDERSON. I'm glad one member of the defense team did.

Your Honor, let's get right down to the basics. Prior to October 9, 1981, did you have any knowledge about Borders' corrupt scheme to extract $150,000 from the Romano brothers?

Judge HASTINGS. No, sir.

Mr. ANDERSON. Prior to October 9th, did you have any knowledge about any of the reported corrupt schemes in which Mr. Borders may have been engaged?

Judge HASTINGS. No, sir.

Mr. ANDERSON. Did you ever conspire, discuss, or otherwise knowingly participate in Mr. Borders' corrupt scheme to extract money from the Romanos?

Judge HASTINGS. Absolutely not.

Mr. ANDERSON. Did you ever knowingly conspire, discuss, or otherwise participate in any of Mr. Borders' reported corrupt schemes?

Judge HASTINGS. No, I did not, Professor Anderson.

Mr. ANDERSON. Now, Judge, you did testify at your trial, didn't you?

Judge HASTINGS. Yes, I did.

Mr. ANDERSON. Do you recall about how long you were on the stand?

Judge HASTINGS. Over a period of two days, it consumed two trial days. I don't know the exact number of hours and minutes, but it was over a two-day period of time both on direct and cross.

Mr. ANDERSON. And that included direct examination by Ms. Williams?

Judge HASTINGS. Yes.

Mr. ANDERSON. And it included cross-examination?

Judge HASTINGS. By Mr. Weingarten, yes.

Mr. ANDERSON. By Mr. Weingarten.

Judge HASTINGS. Uh-huh.

Mr. ANDERSON. Judge, in the course of your two days of testimony, did you knowingly or intentionally make any false statements?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Since your trial, have you learned that at least four of the statements you did make in that testimony were, in fact, wrong?

Judge HASTINGS. Yes.

Mr. ANDERSON. At the time you made those statements, did you know that any of them was false at that time?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. At the time you made each of those statements, did you believe the statements to be true?

Judge HASTINGS. At the time that I made the statements, I thought that they were true.

Mr. ANDERSON. Now, Judge, we'll return to that in more detail, but let me first ask you if we could tell the committee something about who Alcee L. Hastings is.

Judge HASTINGS. All right, sir.

Mr. ANDERSON. Where were you born, sir?

Judge HASTINGS. I was born in Altamonte Springs, Florida, on September the 5th, 1936.

Mr. ANDERSON. And where did you do your schooling?

Judge HASTINGS. I went to a four-room schoolhouse called Rosenwald Elementary School in Seminole County, Florida, which is juxtaposed to Orange County where Orlando is situated. And I left from elementary school after eight grades there in Altamonte

Springs to go to Crooms Academy High School in Sanford, Florida, which was 30 miles by bus back and forth. From Crooms Academy High School, I matriculated at Fisk University, achieving a Bachelor of Arts degree in biology. It was then called zoology. I left there and went to Howard University for two years and was at the law school at Howard University, left Howard University's law school and went to Florida A&M University's law school that was in existence at that time, and graduated from Florida A&M University with what was then an LL.B. degree. That has since been changed to something called a JD.

Mr. ANDERSON. Now, Judge, when you were in Altamonte Springs growing up, did you live with your parents?

Judge HASTINGS. I lived with my parents for a portion of that time until 1949. My parents and myself had been in and out of the eastern corridor, having lived in Newark, New Jersey, Jersey City, New Jersey, and Atlantic City. And for the bulk of my high school and beginning the last period of my elementary school, I lived with my grandmother. It would be a better characterization of me to say that I was grandmama-raised. My mother and father were persons who worked in service, living on the premises of extremely wealthy people, first in New York and then in California, and I visited with my parents often and their money visited with us even more often to keep my grandmother and myself going. But in large part, my formative stages during high school, I was with my grandmother the bulk of any year until I went to college.

Mr. ANDERSON. Now, Judge, when you graduated from law school, what did you do?

Judge HASTINGS. I took and passed the Florida bar, taking a bar review course in Miami, and then I left and went to California where my parents were at that time.

I started studying for the California bar, and I determined that I would be best served if I went back to Florida. I went back to Florida, was telephoned by my high school classmate, went to Fort Lauderdale—the very first time I had been in Fort Lauderdale in my life. He and I had a discussion, and we formed what I like to refer to as a backyard partnership. And we practiced law for three years at that time.

Mr. ANDERSON. Who was your——

Judge HASTINGS. His name is W. George Allen. We were high school classmates at Crooms Academy. He was a year behind me.

Mr. ANDERSON. And how long did you practice with Mr. Allen?

Judge HASTINGS. A little better than three years. Between three and four years we practiced together, and then we went into individual practice. And I went about my business, and he went about his.

Mr. ANDERSON. Now, when did you start practicing in Fort Lauderdale, Judge?

Judge HASTINGS. I started practicing in Fort Lauderdale in 1963.

Mr. ANDERSON. And could you tell the committee a bit about the nature of your practice and what you were doing in this period?

Judge HASTINGS. I refer to my practice—you know, I have seen accounts of it, but I refer to my practice as a "y'all come" law practice. That's exactly what it was, Professor Anderson.

In those days, there were no places for young black attorneys to get their starts, as many of my counterparts who began with me—and are still friends of mine—they were in the city prosecutor's office, the city attorney's office, municipal courts and the county solicitor, it was called then.

But I went into practice, and what I handled was everything that came into my office to the best of my ability. A large portion of my practice, I heard someone refer to it the other day as *pro bono* work, and then I believe Judge Henry Latimer was trying to describe it. Judge Latimer was not as mindful as myself. A lot of my work was done simply for the reason that there was nobody else to do it. So I filed a lot of desegregation lawsuits, the first one in Broward County against the school system, the first one in the State of Florida against the juvenile detention system, the turnpike toll plazas, and the restaurant facilities on the turnpike. I co-joined others with those lawsuits.

I filed, I believe, every major lawsuit against a hotel or restaurant that discriminated against an individual. I also had some very fascinating lawsuits in that time. I represented a Ku Klux Klan member against a black-owned and operated radio station for refusing to allow him to put his ad on television, and I came under very heavy fire from black and white people for doing that. But I perceived it as a rights issue.

I worked for the NAACP for no pay, both in Fort Lauderdale and the Opa Locka branch, which is situated in Dade County, Florida. And I, generally speaking, took on the establishment, for lack of a better expression, and enjoyed every minute of it.

Mr. ANDERSON. Now, Judge, the practice that you recall and describe here is essentially a civil rights practice. Was that really all you were engaged in, or what else?

Judge HASTINGS. If what I described was my civil rights activity, I have ignored in my statement to you—I did real estate. I handled as many murder cases as any single practitioner in Broward County for a period of 10 years. And I say any because the dean of practitioners in the area of first, second, and manslaughter and the related parts of murder was a man named Joe Varen. And I have since compared mine and Joe's won/loss record. And I daresay with no offense to him, because he's one of the best lawyers that ever came down the pike in our area, my won/loss record was better than Joe's in murder, and Joe got paid and I didn't.

And I did commercial law. And when I say "y'all come," I mean we did everything. I did fender benders. I never had a major negligence case, but I did lots and lots of small negligence cases. And that was the extent of my practice. General is what we would term it, I think, and in large parts that's what I did most of my career.

Mr. ANDERSON. Well, Judge, during this period when you were in practice, were you politically active?

Judge HASTINGS. Yeah.

Mr. ANDERSON. Can you——

Judge HASTINGS. I ran for the Fort Lauderdale City Commission. That was not the first thing I did. I was in town for maybe six months, and I ran for the Florida State Legislature. After that, I ran for the City Commission. After that, I ran for the Florida State

Senate, and then the City Commission again, and then the House of Representatives of the State of Florida again.

Then, in 1970, when Senator, former Senator Lawton Chiles was elected, I ran in that election in the Democratic primary along with Senator Chiles for the office of the United States Senate. Subsequent to that, I ran for the Public Service Commission, which is the utility regulatory agency in the State of Florida, in 1974. And I lost all of those elections.

Mr. ANDERSON. Your political record wasn't as good as your murder trial record.

Judge HASTINGS. Not at all.

Mr. ANDERSON. During this period, Judge, were you also active in community affairs, speaking and that? Tell the committee a bit about what you were doing.

Judge HASTINGS. I went to one or two meetings every night. I think it had a bearing on my family relationship with my then wife because I was gone an awful lot in politics, civic work, community work. And at that time, I worked very actively in my church. I'm a member of the African Methodist Episcopal Church. I worked actively in my fraternity. And I worked actively in the Elks as an organization and the Knights of Pythias as an organization.

And the natural wont and bent of things in the 1960's was that if you wanted things to change, you had to be involved. And I was not the only person involved in Broward County, and that's where most of my work was being done at that time until 1968 when I converted a large portion of my practice to low- and moderate-income housing. And I don't mean to be facetious, but I came evidently at the wrong time. But, by and large, I found myself very actively involved in my community then, and I rather suspect nothing has changed. I was requested to speak often to civic groups, and that ranged the board.

I'm a founding member of the National Association of Christians and Jews in my county. I spoke to—during the halcyon days of segregation, many times I would be the only black person in the room speaking to issues of critical concern, reference brotherhood and sisterhood as it pertained to all individuals in our society. I'd like to think that that work was instrumental in vital change in the community that I lived in, and, therefore, to say that I was active is an understatement. I believe that I was too active in terms of what it did to me physically and emotionally because it kept me on the go, and it also impacted on my practice of law in terms of my opportunity, perhaps, to make a better living had I just centered in on nothing but practicing law.

Mr. ANDERSON. Now, Judge, what kind of living were you making in the practice of law at that time?

Judge HASTINGS. I made a good living. I always paid my bills. I took great pride in the fact that I never missed paying a secretary. I can recall a lot of times paying the secretary, and I didn't have any money. But I never missed paying obligations. I never was—I never filed bankruptcy. I felt bankrupt a lot. But I didn't make a lot of money, but I always had enough money to do the things that I needed to do. And, by and large, I would say that I never, never, never really had a substantial sum of money at any one time during the course of my practice.

Mr. ANDERSON. Now, Judge, did there come a time when you were appointed a State court judge?

Judge HASTINGS. Yes. Governor Reuben Askew appointed me in 1977 to the State court, the court of competent jurisdiction in the State of Florida.

Mr. ANDERSON. And could you tell the committee a bit about the process, the State process by which you were screened and put in that position?

Judge HASTINGS. At that time, the Democratic Party had chosen the tack of establishing in each of the respective districts a judicial nominating panel. You would go before the judicial nominating panel and make your presentation and answer their questions, and no less than three, and at that time no more than nine, names would be sent to the Governor. When my name was sent to the Governor, I was one of three persons of a number of 79 persons who had applied for what was then one vacancy. And Governor Askew chose me at that point in time.

Mr. ANDERSON. Do you recall, when was that, Judge?

Judge HASTINGS. In 1977. I don't recall the exact month.

Mr. ANDERSON. And do you recall what the salary of a State court judge was at that time?

Judge HASTINGS. I don't remember the amount of the salary, but whatever it was, it was a whole lot more than I was making practicing law.

Mr. ANDERSON. So going on the bench was not a cut in your income?

Judge HASTINGS. No. I've said before, and it's true—and I always hear people speak in terms of their wanting to be a judge. I had no great ambition as a lawyer to become a judge, and when I became a judge, it was truly to get out of the practice of law because I hadn't done well and I needed more security. My son was coming of age, and I needed a regular paycheck in order to be able to provide the things that were necessary in order for him to go to college. So whatever the salary was, I considered it attractive.

Mr. ANDERSON. Now, Judge, in your time as a State court bench, which court were you on?

Judge HASTINGS. I served in each of the divisions of the court, but the largest portion of my service as a State court judge was in juvenile court. But I served in the civil, the criminal, and the probate divisions of the Circuit Court for the Seventeenth Judicial Circuit there in Broward County, Florida. But, easily, a year-and-three-quarters of my service was spent in juvenile court, Professor Anderson.

Mr. ANDERSON. And did you enjoy that?

Judge HASTINGS. It's the best work that I believe that I have ever done in my life. In my entire career as an adult, I think I made more impact in the juvenile court than in anything else that I've done before or since. The rewards were immense when you save a child. You lose more than you save, but I enjoyed that work and wouldn't mind doing it today, quite frankly.

Mr. ANDERSON. Now, when you say the Seventeenth Circuit, that's Broward County?

Judge HASTINGS. That's Broward County, right next to Dade.

Mr. ANDERSON. And so the committee understands, in Florida the circuit courts are the highest courts, the courts of general jurisdiction at the trial level?

Judge HASTINGS. That is correct.

Mr. ANDERSON. Now, again, when did you become a Federal judge?

Judge HASTINGS. In 1979, I was appointed by then President Jimmy Carter.

Mr. ANDERSON. And although I'm sure the committee probably knows more about it than I do, can you briefly, from your standpoint, describe the process about how that came about?

Judge HASTINGS. Similar to the State court process. There was a judicial nominating panel for the State of Florida, and our two Senators at that time were Senators Richard Stone and Senator Lawton Chiles. They were in agreement that such a selection panel should come into existence. The appointees to that panel were by the respective Senators and by the Florida bar. There were nine members. My recollection is there were well over 250 applicants for five jobs. There had been an omnibus bill that had passed the United States Senate and—Congress, if you will, the House of Representatives and the Senate. And that omnibus bill provided a significant number of brand new judgeships. And President Carter had the responsibility of filling those, and the Southern District of Florida received an allocation of five new judgeships.

As I have indicated, there were well in excess of 250 people to that judicial nominating panel. It was pared down to the final five whose names were then sent to the United States Senate, once the President had nominated us, for their advice and consent. And it was here in the United States Senate before the Senate Judiciary Committee, and ultimately voted on by the full Senate, that fruition came to my becoming a United States District Court judge.

Mr. ANDERSON. Now, Judge, Mr. McCrary has indicated he was one of the 250 and one of the smaller number. Have any of the other witnesses, to your knowledge, who have testified here, were they included in that group?

Judge HASTINGS. Yes. Judge Edward Rogers was also an applicant in that group. Judge Henry Latimer who appeared here just got caught in the backwash of change, but he was not in that group. But he has since been a potential nominee whose name gets left in the break between change of parties, so to speak, or change of administrations.

Mr. ANDERSON. Judge, had you been active in the presidential campaign, the political campaigns for——

Judge HASTINGS. Dating all the way back to President Kennedy, when I was a very young man, I actively participated—against my dad's wishes; my daddy liked Richard Nixon. I still don't know why. But I supported, as did my mom, President Kennedy, and I worked very actively in that campaign and had some very good memories of my days in California and Florida with reference to that.

Subsequent to that, I worked in the State of Florida extremely actively in President Lyndon Johnson's campaign. And that led me to be invited a couple of times to the White House, and on several occasions I had the distinct pleasure of meeting Lyndon Johnson

and having conversations with him in small groups, never alone, as I can recall.

I then worked for other potential presidential candidates that were Democratic rivals and ultimate nominees, and ultimately I supported President Carter and I was one of the original five people in the State of Florida that chose to support him early on in the campaign. That caused me then to truly, for the very first time, be able to say that I knew a President one on one, one on one meaning that there were times that I had an occasion to be the only person with him for protracted periods of time when he was campaigning in the State of Florida.

That was the extent of my involvement in presidential politics until such time, of course, as I was nominated to be a United States District Court judge.

Mr. ANDERSON. Judge, let's turn to the investiture ceremony when you became a United States district judge. Where was that held?

Judge HASTINGS. At Dillard High School, breaking with tradition.

Mr. ANDERSON. Where is Dillard High School?

Judge HASTINGS. Dillard High School is smack dab in the middle of the black community in Fort Lauderdale. It's not in the city of Fort Lauderdale, but it's proximately situated. And I chose that for symbolic reasons. All of our investitures had been held previous to that time in the central courtroom which is perhaps one of America's more ornate of its many, many outstanding courtroom facilities. But it is really a gorgeous courtroom facility, and the history of it allows that all investitures had been held at that time there until such time as I broke with tradition. And I did so because I felt very strongly that children needed to have an opportunity to see these kinds of things happen, and I specifically required of the high school that a block of seats in the room be made available for students, not only at Dillard High School but in that entire county. So it was the first time that anything like that had been brought to the black community.

Mr. ANDERSON. Judge, besides yourself, obviously, who participated in that ceremony?

Judge HASTINGS. Hemphill Pride, William Borders; Chesterfield Smith, who was a former president of the Florida bar and the American Bar Association; whomever the other functionaries were; Andrew Mavrides was one of the persons; and my son who helped me with my robe. And there were other persons, of course, court functionaries. Judge C. Clyde Atkins was then the chief judge of the Southern District of Florida, and the senior and junior-most judges have the responsibility of making statements during the course of that day. And, of course, Buzz—I can't think of his last name—was the clerk at the time, and he had the responsibility of swearing me in. There was a rabbi that is one of the persons who—and I didn't know at the time—Rabbi Jaffe, Samuel Jaffe, he's a long-standing friend of mine, and I had held him away from his Sabbath on that particular day, and it still is kind of a sore travail for me because I didn't know that I was doing that at the time. But also Reverend George Weaver who was and is one of the deans of

the Baptist Church in the State of Florida, he delivered the opening prayer, and Rabbi Jaffe delivered the closing prayer.

I believe those are all of the functionaries, or at least the ones that I recall.

Mr. ANDERSON. Judge Hastings, a few of the names there have come across in this, so let me ask you: Why was William Borders there?

Judge HASTINGS. William Borders was there in his capacity as president of the National Bar Association, but not so much out of any friendship—and I did have a friendship with him. But had there been another president of the National Bar Association, that would have been the person. I specifically chose the NBA president, but that's why he was there.

Mr. ANDERSON. And the name Andrew Mavrides has and probably will come up in this case. Who is Andy?

Judge HASTINGS. Andrew Mavrides is—at that time was a very close friend of mine and a person who I had a great deal of respect and admiration for, the fine work that he had done similar to the kinds of work that I had done. And I perceived a very strong need to have him be a participant in the program.

Mr. ANDERSON. And Hemphill Pride?

Judge HASTINGS. Hemphill Pride was at that time my best friend. And even though there were those, including Hemphill, who suggested that because he had been incarcerated that it wouldn't make for a good appearance, I didn't care about that. He was my friend and I wanted him there, and I required him to be there, as I did when he was under indictment when I became a State court judge. I required his presence because I considered him at that time to be my best friend.

Mr. ANDERSON. Judge, could you briefly tell—when did you assume the duties of United States district judge?

Judge HASTINGS. I began my active service in November of 1979, but I was sworn in, I believe, in October. But I began active service in November of 1979.

Mr. ANDERSON. Could you briefly recount—we'll get to 1981 in a moment. Briefly recount for the committee the differences that you observed upon becoming a Federal judge between what Federal judges do, what you did as a State court judge, and how you sort of got into the process.

Judge HASTINGS. Well, the responsibilities are totally different. First off, I came from juvenile court, and that's a quantum leap from dealing with a State bureaucracy to moving to a court with the awesome jurisdiction that a United States District Court has. But, you know, there's been too much tightness in the room, and maybe somebody will allow for a little bit of levity. But the difference between the State court judge and a Federal judge is: When you are a State court judge, you have to talk loud. When you're a Federal judge, you can whisper and everybody listens.

Mr. ANDERSON. Judge, did you make the transition easily and comfortably? Just tell us from the standpoint of making this kind of quantum leap.

Judge HASTINGS. I think I made the transition easily, and I also think that the judges of the Southern District of Florida made it very easy for the five of us. For the very first time—when I say the

five of us, I'm referring to Judges Paine, Spellman, Davis, and Keough who also came on board roughly the same period of time in the Southern District of Florida. And all of the other judges—we had a two-day seminar, and those judges gave us all of the things we needed to know in capsule form. Even before we came here to the Federal Judicial Center, we were oriented toward the local rules, 2255 petitions, things that I was not privy to as a State court judge. And little bitty things about selection of law clerks, secretaries, the whole stroke was given to us by these judges.

But to be very frank, Professor Anderson, I didn't consider it a difficult thing to do to make that transition. I was a judge, and so I just went from being one kind of judge to another. But the basic responsibilities, the ethical constraints, all of the things that are attendant in Federal court, are the same in State court. With the exception of jurisdictional undertakings, the job is very similar.

Mr. ANDERSON. Judge, we'll return to your judicial business, but let me now turn to the events of 1981.

Judge HASTINGS. All right.

Mr. ANDERSON. There has been evidence here concerning the pattern established by your activities in context, and I'd like to just briefly, to the extent we can, reconstruct for the committee some of the other things that fit within that pattern.

Mr. Chairman, we had admitted as a House exhibit an itinerary that—I'm sorry, as a respondent's exhibit an itinerary that had been prepared by Ms. Williams. I wonder if we might lay that before the judge just simply so we can move through this and refresh his recollection.

The CHAIRMAN. What exhibit number is that?

Judge HASTINGS. Mr. Chairman, it's Exhibit No. 139. "1981 Travel" is how it's headed.

Mr. ANDERSON. Judge, we may want to refer back to that, but if you could just set it by yourself and we'll begin.

Mr. Chairman, we have about half of these with the 24 copies, and the rest of them are being run this morning. The House has them. We've given them an additional set. If I could just take these forward to the judge.

Your Honor, let me show you what has been marked Respondent's Exhibit 74 and 75. Those are documents produced by the National Bar Association which the House has graciously acknowledged their authenticity. But let me ask you if you can recognize those documents yourself.

Judge HASTINGS. I recognize 74, which is the National Bar Association agenda for their Board of Governors meeting, but I only recognize it in the sense that I've reviewed it here at some point during our preparation.

This particular Respondent's Exhibit No. 75, I have vivid recollection of. I was the keynote speaker for the Judicial Council of the National Bar Association at their mid-winter meeting which was held at the Carillon Beach Hotel in Miami, and the dates were February 26 through March 1, 1981.

Mr. ANDERSON. Now, let me ask you, Judge: Do I understand that the Judicial Council is a part of the National Bar Association?

Judge HASTINGS. Indeed, it is.

Mr. ANDERSON. And was it the standard practice for both the lawyers or whatever you call it, the general section of the National Bar Association, and the Judicial Council to meet at the same time at least once a year?

Judge HASTINGS. Indeed, and particularly the mid-winter meeting. For the last 20 years, the Judicial Council's mid-winter meeting and the Board of Governors of the National Bar Association have been held in conjunction. Very recently—and I say recently in the last eight or nine years—it seems that wisely they have chosen warm climes to hold that mid-winter meeting. But even at the national convention, the one that's in progress now in Oakland, California, the Judicial Council's meeting is going on at the same time, and that happens in the American Bar Association as well. The section pertaining to judges meets at the same time that the ABA general assembly is meeting.

Mr. ANDERSON. Now, Judge, let me also show you what's been marked Respondent's Exhibit 144 and ask if you can identify that.

Mr. BARON. I'm sorry. What number was that?

Mr. ANDERSON. Number 144.

Judge HASTINGS. Number 144.

Mr. ANDERSON. It's the hotel bill.

Judge HASTINGS. Yes, I can identify this.

Mr. ANDERSON. What is it, sir?

Judge HASTINGS. This is a check made payable by me to the Carillon Hotel, which was for the deposit confirming a room that I had secured at that time, a one-bedroom suite, at the Carillon Hotel for the meeting of the Judicial Council.

Mr. ANDERSON. That's the same period, from February 26 to March 1?

Judge HASTINGS. Yes.

Mr. ANDERSON. Now, the evidence shows that William A. Borders was present at the National Bar Association at that time.

Judge HASTINGS. Yes.

Mr. ANDERSON. Let me talk with you about a notion of the Judicial Council. You were a member of the Judicial Council?

Judge HASTINGS. Yes, I was.

Mr. ANDERSON. And I think the program there shows that you were the keynote speaker at the meeting?

Judge HASTINGS. That is correct.

Mr. ANDERSON. To the extent you can recall from normal practice or specifically, is this the kind of occasion when there would have been communication between you and Mr. Borders before and after the event?

Judge HASTINGS. There would have been communication between the two of us, and I believe that there may have been. But, Professor Anderson, I need to have you understand that Bill Borders was not the only president of the National Bar Association that I have known. I have known—and up to that time, I've known a considerable number of them, and I believe that you would find that when meetings of this kind, even before I was a judge, would come into existence, I was sort of a player, if you will, in the National Bar Association that never sought to or wanted to hold office. But I believe that I had a considerable amount of influence with those per-

sons who were elected, particularly since we did a lot of back-room politicking in order to get them elected.

So, yes, there would have been calls between Borders and myself during that period of time, particularly as it pertained to functions ongoing.

Mr. ANDERSON. Judge, now, only one of those calls has been identified in the available long-distance records.

Judge HASTINGS. Uh-huh.

Mr. ANDERSON. Is that consistent, that there would have been only one call between you and Mr. Borders before this meeting? Is that consistent with your recollection of what the practice would have been?

Judge HASTINGS. You know, I can't say that that's consistent, and I can't believe that in this particular setting that Borders and I did not speak more than one time. But there would be sporadic times where we may have spoken more.

The reason that I say that is I was giving a reception, and I'm sure that I wanted to make sure that the president of the organization was present, and I wanted to know about attendance so that I could prepare. I did give that reception, and, therefore, I would think that there may have been more calls than the so-called one recorded between the two of us during this particular period of time.

Mr. ANDERSON. Well, based on your knowledge of the National Bar Association, would there have been calls from persons other than you to the president concerning this——

Judge HASTINGS. Oh, no question. No question. Not only to the president of the NBA but the Judicial Council and other persons who had committee responsibilities. I mean, it's an organization, and a lot swirls around meetings and preparations for those meetings.

Mr. ANDERSON. Well, many of the records are gone, but might some of those calls be reflected in the message pads or something like that if we were trying to set a context here?

Judge HASTINGS. I would think so. To the extent that a message pad reflects what someone says that they received in the way of a message, it would be my belief, if you were to examine the message pad of William Borders or any National Bar Association president, you would find a considerable number of calls from a significant number of individuals from around the United States of America and probably elsewhere in the world.

Mr. ANDERSON. Let me ask you, Judge, have you examined those message pads?

Judge HASTINGS. Not in a long time to any degree that would allow that I'm sophisticated enough to know exactly what's in every one of them. But I've seen mine and William Borders' message pads that are attendant to these particular matters that we are here before the Senate on.

Mr. ANDERSON. Now, Judge, let me move forward. Mr. Pride has testified, and I think the record's clear, that he was released from incarceration in March 1981. Do you recall that event?

Judge HASTINGS. I recall when he was released. If you had asked that question a different way, asking me the date, I would not have

known. If that is the date that he was released, I recall vividly when he was released from prison.

Mr. ANDERSON. Now, how do you happen to recall that?

Judge HASTINGS. Well, just before he was released from prison, among the things that he was trying to get me to do was to call the warden at the prison to try to assist in getting him in a halfway house and removed from the Montgomery facility where he was housed. And I also believe that there was some telephone call between himself and myself, my mom and his mom, his child and my child, because we were glad that he was out of prison. So I'm sure I talked with Hemphill. I'm sure I talked with Bill Borders. I'm sure I talked with any number of other persons about the fact that he was out of prison.

Mr. ANDERSON. Judge, you mentioned that he asked you to call the warden. Did you call the warden?

Judge HASTINGS. What I did was I called Warden Crowe, and I said to him words to the effect that Hemphill wanted me to call him. And I thought that that would be inappropriate for me in my judicial capacity to call him and make such a request. But Hemphill was calling so much about it, and his mom had written to me about it, until I wanted to at least have the man have peace of mind. So I asked the warden to say to him that I had called him, and whether Warden Crowe did that or not, I simply don't know. But I didn't ask the warden to do anything for Hemphill, nor would I have.

Mr. ANDERSON. So in any event, the immediately preceding and period following Mr. Pride's release would have been an occasion when we might expect to find a fair amount of telephone traffic back and forth between the families and between you and Mr. Borders——

Judge HASTINGS. Yes.

Mr. ANDERSON [continuing]. And Mr. Pride and Mr. Borders?

Judge HASTINGS. I would think so. And whether the record reflects that or not, I would think that that would be the case.

Mr. ANDERSON. Now, Judge, let me move up a bit to April. There is in evidence a charge to your home phone from a pay phone—and the pay phone has been identified as being down the corridor from your courtroom—and it's a call to what has been identified as the pay phone, I understand, in the United States District Courthouse here in the District of Columbia. That was on April 9th.

Judge, why on earth would you at noon walk down from your chambers to a pay phone and make a telephone call from a pay phone when you had an FTS system sitting on your desk?

Judge HASTINGS. First, I want it to be understood that I don't have a memory of that particular call. I don't deny that that call may have been made by me. I don't have the slightest idea why the use of the pay phone at that particular point in time. I just simply don't remember the call. I may have said this when put that question at another point in time. But, Professor Anderson, it doesn't make sense to me since I'm at some point going to testify with reference to things you may ask me or the Senators or the House Managers. I had nothing to be concerned about about the use of a pay phone or any other phone in terms of what I was doing or saying at any point in time, and it seems to me that if I was going

to be trying to be secretive, if you say that call was in April of 1981, then I would think that I would have been using that same phone—my recollection is it was on that same floor—at other points in time.

Now, I simply don't remember the call. But I also don't wish it to be thought that I did not make it. I do not deny having made it. I believe you will find that I may have used a pay phone elsewhere at other points in my life.

Mr. ANDERSON. Well, Judge, let me push you a bit, though, to the extent you can. The evidence suggests that your chambers were not too many feet down the corridor, and here's the pay phone. Why on earth, given what you know about yourself, your habits, your practice, why on earth would you have done that?

Judge HASTINGS. If I have to speculate, I can give you a scenario a minute for that occurring. I don't believe that the phone system was down, for example, on that day, thereby giving rise to me using a pay phone. Has the phone system ever been down? Yes. That has happened at the Federal courthouse on numerous occasions, and particularly around that point in time. But I don't believe that was the case on that day.

But I have an idiosyncracy that people associated with me don't particularly like, particularly people that travel with me. And that is that I don't like to go back. And when—this morning, coming here, if I had left something where I left from, I would have continued on here and not gone back to get it, no matter how important it was. I can perceive that I stepped out of my office and remembered that I had to make a call, or that I was coming up and remembered that I had to make that call and made the call from the pay phone. But that's pure speculation because I simply don't remember the call.

Mr. ANDERSON. Now, Judge, let me move forward, if I can, a bit in April and show you what has been marked Respondent's 145 for identification and ask if you can identify it.

Why don't you identify each of the parts because it's a bit of——

Mr. BARON. Mr. Anderson, could we have that number again? I'm sorry. We didn't hear it.

Mr. ANDERSON. Number 145, it's the April 21st correspondence.

Judge HASTINGS. This is an April 21, 1981, letter to Judge W. Eugene Sharpe in the State of New York. At that point in time, Judge Sharpe, who is since deceased, was the president of the Judicial Council of the National Bar Association. And I copied here and wrote individual letters to William Borders, who was then the president of the National Bar Association; Arnette Hubbard, who is from Chicago and was the president-elect of the National Bar Association; and Alice Bonner, who at that time was a judge in Houston, Texas, and was the president-elect of the Judicial Council of the National Bar Association. And the essence of the letter had to do with conducting two type seminars: one by a psychologist having to do with stress, and the other, some effort to try and get President Carter and to get then Attorney General Griffin Bell to be honored at a Bar Association Judicial Council function. And that was the essence of this, and it was a matter of some considerable talk between the parties identified, as well as others.

Mr. ANDERSON. Well, now, when you talk about the dinner honoring either President Carter or Griffin Bell, quite apart from desiring to honor people, was there another purpose for that dinner?

Judge HASTINGS. Yes. To try to raise money, hopefully, for the Judicial Council's undertakings, and my hope was that they would adopt that and go forward. And if a large number of people as I suspect would have attended such a function had attended and paid, then I believe that the organization would have benefited from it.

Mr. ANDERSON. Now, Judge, using that to refresh your recollection and whatever recollection you may have of the events, what did you understand to be the decision, the process by which that proposal might be considered?

Judge HASTINGS. It would have had to go to both their boards, and either of their boards, executive or otherwise, could have approved it. And then at some point, it would have been presented to the organization. But there's a lot of control by the presidents and their boards. And had the respective presidents and presidents-elect taken this matter to their respective boards, it could have become a part of the regular agenda without general assembly approval.

Mr. ANDERSON. So you were looking for that to be held at that year's NBA annual meeting?

Judge HASTINGS. Hopefully at the annual meeting, but when I pushed this letter up, my belief was that they were going to be meeting in Los Angeles or some other place in the country, the boards were. And I wanted these particular people to bring that to the attention of their respective boards. And then at the annual meeting that was to be held later, it was my hope that they would be able to bring these persons as participants in the program.

Mr. ANDERSON. Now, Judge, as we sit here eight years after the fact, do you have any specific recollections of conversations with either Mr. Borders or Judge Sharpe about it?

Judge HASTINGS. No question. I did talk with him about that, and the reason that I did was simply that I thought that if we were going to be able to get the President and/or the Attorney General, that it was going to take clout to do that. And I thought that William Borders had the sufficient clout in order to be able to accomplish that. And it's for that reason that I know that I spoke with him regarding same.

Mr. ANDERSON. Mr. Chairman, just so I don't get behind myself, I would move the admission of Respondent's Exhibits 74 and 75, which are the Judicial Council NBA program exhibits from February 26 to March 1; the judge's hotel records, Respondent's Exhibit 144 for that period; and the current exhibit, Respondent's 145, into evidence.

The CHAIRMAN. Is there objection?

Mr. BRYANT. No.

The CHAIRMAN. Those exhibits will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 74, 75, 144 and 145 and were received in evidence.]

Mr. ANDERSON. Now, again, Judge, the records may be incomplete, but would communications concerning meetings or issues

such like this be likely to be reflected in Mr. Borders' message logs?

Judge HASTINGS. It would be my belief that, as I said earlier, a significant number of people would have been calling Mr. Borders and Judge Sharpe during that period of time, and doubtless would have been calling Ms. Hubbard and Ms. Bonner during that same period of time.

Mr. ANDERSON. Now, Judge, could I direct your attention to what is Respondent's Exhibit No. 139?

Judge HASTINGS. Yes, sir, I have it in hand, Mr. Anderson.

Mr. ANDERSON. Which is a capsule of your at least travel plans for the year. I note between January and April there are a number of trips we haven't discussed. To the best of your recollection, do those appear to be trips that you, in fact, made?

Judge HASTINGS. Every one of them.

Mr. ANDERSON. Let me now direct your attention to May 5th, the period May 5th to 7th, and ask what that shows where you would have been at that time.

Judge HASTINGS. May 5th, I was scheduled to go to New Orleans, and on the 5th from New Orleans to Newark, New Jersey, and on the 7th from Newark, New Jersey, to Orlando, Florida.

Mr. ANDERSON. Do you recall—well, let me not make——

The CHAIRMAN. Counsel, let me just interrupt a moment. Are there copies of any of these exhibits that the committee could look at as they're being discussed?

Mr. ANDERSON. Mr. Chairman, as they're coming out of the copy center there, I'm not certain. I'll ask someone to see if they can pull up the ones that we have thus far.

The CHAIRMAN. Any that are available we would, of course, like to see while they're being discussed with the witness.

Mr. ANDERSON. I appreciate that, Mr. Chairman.

Judge Hastings, rather than let me push on your memory, let me show you two additional exhibits.

Judge HASTINGS. All right, sir.

Mr. ANDERSON. The first has been marked Respondent's 135A. It is a part of the composite itineraries that were put in evidence as Respondent's 135; the second is Respondent's 146. Let me ask if you can identify those.

Judge HASTINGS. Yes, sir. Respondent's Exhibit No. 135 is a draft of my travel itinerary that would have been prepared by Betty Williams, reflecting travel from Miami to Newark and Miami to Orlando. Respondent's Exhibit No. 146 is a composite exhibit that includes a letter of acceptance, a letter requesting my appearance, and the program of the Sixth Annual New Jersey Juvenile Justice Training Seminar, May 6, 1981.

Mr. ANDERSON. And from that correspondence, who invited you to the juvenile justice training?

Judge HASTINGS. Captain Earl Wallo of the Florham Police Department in Florham Park, New Jersey.

Mr. ANDERSON. Did you go to talk to that group?

Judge HASTINGS. Yes, I did.

Mr. ANDERSON. Judge, why is a United States district judge with that awesome jurisdiction going up to talk to a juvenile justice seminar in Newark?

Judge HASTINGS. I believe during the period of time that I was a juvenile judge, I became recognized for some of the innovative things that we did, not that I did but that we did in Broward County, and that I like to think that I was instrumental and catalytic in causing to come into existence.

Therefore, having spoken to a national seminar that occurred in Miami, many of the participants, including Captain Wallo and juvenile officers from his area, were still interested in my views. And the fact that I was a Federal judge didn't stop me from having some expertise with reference to children's issues, and I think that's why they invited me.

Mr. ANDERSON. And have you on other occasions continued to speak on juvenile justice matters?

Judge HASTINGS. I believe you will find, and we will get to at some point, I was speaking in Harrisburg along similar lines. And as late as six months ago, not at a national conference, but locally I spoke specifically addressing children's issues.

Mr. ANDERSON. Now, at the time you were traveling, the proposals to the NBA annual meeting, had they been acted upon as far as you can recall, or were they still circulating? The one about the dinner honoring President Carter or Griffin Bell?

Judge HASTINGS. I don't know that they were ever really acted upon, but I know that they were discussed actively.

Mr. ANDERSON. Now, Judge, there is in the telephone records evidence that you were trying to call William Borders in Washington from Newark, New Jersey. I think you made a call to his house and to what we later learned was Madeline Petty's.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Do you have any specific recollection of those calls?

Judge HASTINGS. The call from Captain Wallo's house and the only time that I would have reached Madeline Petty's house would have been—that I know of—calling him, meaning Borders, during this particular period of time. I don't remember whether I spoke with him. If I was about the business of trying to reach him during this period of time, my belief is that it would have been in conjunction with the impending meeting of the board that was to be held in Los Angeles. And at another time, I believe I called Mr. Borders' home and was given Madeline Petty's number. There may have been two times that that occurred.

Mr. ANDERSON. Well, just to clarify, Judge, if there are calls from you wherever you are to Mr. Borders' home or to Ms. Petty's home, is that times you're trying to get in touch with William Borders?

Judge HASTINGS. Oh, no question.

Mr. ANDERSON. Did you know Madeline Petty?

Judge HASTINGS. I didn't know Madeline Petty then, and I don't know her now.

Mr. ANDERSON. Well, Judge, Exhibits 90 to 93 have established that William Borders was in Miami at that time.

Judge HASTINGS. Fine.

Mr. ANDERSON. Were you aware of that fact?

Judge HASTINGS. I had no knowledge where he was.

Mr. ANDERSON. And had you known he was in Miami, I take it you would not have tried to reach him in Washington?

Judge HASTINGS. Had I known he was in Miami, I certainly would not have been about the business of trying to reach him in Washington.

Mr. ANDERSON. Now, Judge, let me move back a bit. We have thus far been proceeding through a series of documents trying to reconstruct what doesn't quite qualify as ancient records, but events that occurred quite some time ago. Over this period of 1981, were there other topics that you and Mr. Borders would have had occasion to discuss?

Judge HASTINGS. Oh, sure. No question. National Bar Association matters, but the biggest topic that Bill Borders and I talked about what Hemphill and assisting him, and Bill Borders along and or about this same period of time began actively pursuing me to assist in particularly Pride's concerns about his restoration to practice law and about financial concerns. And those were two items.

But we talked about other things. We talked a lot about the lawsuit that he filed and President Reagan's seeking to have him removed from whatever the judicial nominating panel is or was here in the District of Columbia. And we talked about that.

The man and I knew each other. We talked—when we talked—about other matters, other people that we knew, and concerns that other people may have had that we shared.

Mr. ANDERSON. Well, let me probe that, Judge. There is some suggestion the National Bar Association, at least at its leadership level, is a pretty tight community.

Judge HASTINGS. Oh, there's no question. Yes.

Mr. ANDERSON. And Hemphill Pride has been offered as an illustration of reaching out to help a colleague in some form of distress. Do you recall, were there any other colleagues or associates of yours and Mr. Borders who may have been having problems during 1981?

Judge HASTINGS. Often, there are those situations. I don't recall any one specifically, but I can't believe that there wouldn't have been somebody that was having difficulty with the bar, finances, or some concern that Borders or myself would have shared mutually. I just don't remember any specific individual.

Mr. ANDERSON. To make it clear, would it have just been you and Mr. Borders——

Judge HASTINGS. No.

Mr. ANDERSON [continuing]. Or would you have talked with other folks about these things?

Judge HASTINGS. Easily. I can name names for the sake of naming them, but there would be other people that you would find who were talked with as well: O.T. Wells; Borders' law partner, James Cobb; Edward Bell, who was formerly a judge in Detroit, Michigan. There was a network of us. Mark McDonald. I could go on and on and on, but you've pinpointed it. The leadership of the National Bar Association is closely knit, was and is closely knit, and we do a substantial number of favors for each other.

Mr. ANDERSON. Now, again, Mr. Borders' message logs have and are likely to play some prominence here. Let me ask the question. There are in evidence occasions—and there may be more—of places where messages were left by you or others for Mr. Borders where there's no clear indication in the telephone records as to whether

the call was returned. Do you have today a recollection of how frequently or infrequently Mr. Borders, in fact, returned phone call messages?

Judge HASTINGS. I don't have any independent memory of that, but I have a memory of speaking with Bill Borders sporadically, at times more than at other times, and with frequency at some times more than at other times. But, you know, Professor Anderson, if you telescope on nothing but telephone calls between Bill Borders and myself, it would be as if nothing else was going on on a given day. I was leading my life, and I'm sure that Mr. Borders was and other individuals with whom we interfaced. But I don't have any distinct memory of but a few of these telephone calls, and there are events associated with them that cause me to remember talking with him about them.

But if you picked up a phone record and it said that I called Bill Borders on the message pad, I assume that that's true. As to whether he called me back at that point in time, there's no way on earth that I could tell you that. I just can't. I believe sometimes he may have and other times he may not have. That would be true of me and I think of most anybody.

Mr. ANDERSON. Well, Judge, we are at this late date confined to the document, so let me—you mentioned the suit by Mr. Borders against President Reagan, let me take you through some dates here, just to see if they provoke your recollection.

House Exhibit 24 indicates that it was on May 16th that President Reagan purported to fill a vacancy, a seat on the Judicial Nominating Commission that Mr. Borders was occupying pursuant to an appointment by President Carter. Do you have a recollection as to whether you and Mr. Borders discussed that?

Judge HASTINGS. That particular date just coming out of you as a date, I don't remember the date. The event, yes, I remember the date. Borders was upset about it and there is no question but that he discussed it with me, and it would be my belief that he discussed it with a lot of other people. But I know that he discussed it with me, both before the filing of the lawsuit, when the lawsuit was filed, and I have a distinct memory when he won, I don't recall ever seeing the man as happy about any one thing as when, in his words, he beat the President of the United States.

Mr. ANDERSON. Now, when is your mother's birthday, Judge?

Judge HASTINGS. My mother's birthday is May the 23rd.

Mr. ANDERSON. And I take it—did your mother know Bill Borders?

Judge HASTINGS. My mother knew him by telephone and met him twice, once here in Washington, DC, when she was having dinner at what was then a place called, I believe, W.H. Bone, with a lady named Joyce McCray, and Hemphill Pride, and Bill Borders was there. It was not a meeting arranged previously, and Bill Borders apparently paid for the bill and my mother didn't know it.

The second time that she met him would have been in the rental condo that she and I lived in, and that would be how she would know him. Other times, it would be through the telephone, and that's how she would know him.

Mr. ANDERSON. What is your mother's name, just to get——

Judge HASTINGS. My mother's name is Mildred.

Mr. ANDERSON. Now, did you know Mr. Borders—who did Mr. Borders live with?

Judge HASTINGS. To my knowledge, I've never been to his home, but to my knowledge he lived with his mother and I don't know her name, other than Mrs. Borders.

Mr. ANDERSON. Have you met her?

Judge HASTINGS. I met her twice, and I believe both were bar functions.

Mr. ANDERSON. Now, do you have any recollection of Mr. Borders or his mother calling your mom?

Judge HASTINGS. The recollection that I have, aside from receiving a message from Borders in the October period, he did call my mom on May 23rd and he had called her maybe two years in a row up to that time to say Happy Birthday. And why I find it easy to remember is, that particular May 23rd when he called, he said Happy Birthday, and my mom says that she tried to engage him in conversation and he never said anything else and she thought that it was different and so expressed that to me, but she still was grateful to him for calling to say Happy Birthday.

Mr. ANDERSON. Judge, let me show you what has been marked Respondent's Exhibit 110A. This is the opinion of the South Carolina Supreme Court suspending Mr. Pride.

Judge HASTINGS. All right, sir.

Mr. ANDERSON. Are you familiar with that document?

Judge HASTINGS. Pride sent it to me at some point in time.

Mr. ANDERSON. And I take it the concern from the time perhaps before its release, up until this date, was over whether the South Carolina Supreme Court would disbar him or only suspend him.

Judge HASTINGS. That is correct. He was ecstatic about the fact that he received an indefinite suspension and communicated that to me, and Bill Borders and I talked about it regularly, and others. You know, I'm not isolated in my life to William Borders and Hemphill Pride. I mean, talking about Hemphill Pride would have been something to do with all of our mutual associates, and therefore it kind of puts me in a feeling of nothing else is happening but Pride, Borders and Hastings, and that just simply isn't so. I talk to an awful lot of people about Hemphill Pride's restoration of his licenses other than Bill Borders.

Mr. ANDERSON. But I take it, like Mr. Borders' ultimate victory in his suit against the President, that this was a cause for some rejoice?

Judge HASTINGS. Oh, yes. Hemphill was happy, I was happy for him, I know that Borders was and I know that countless other people were happy for him, my mom, his mom, and everyone associated with him.

Mr. ANDERSON. And do you recall specifically talking with Hemphill Pride during that period?

Judge HASTINGS. Oh, yes, I talked with him about that. I talked with him before it occurred and I talked with him after it occurred.

Mr. ANDERSON. Do you recall talking with Bill Borders about that?

Judge HASTINGS. I talked with Bill Borders about it, I'm positive. I don't have a distinct memory of the date or the specific conversation, but our conversations generally at some point turned to Pride.

Mr. ANDERSON. And I take it, one source we might, to the extent the pattern might be reconstructed, that might be reflected in Mr. Borders' message logs of the long-distance records at this point?

Judge HASTINGS. Yes, and there's a missing link. Now, I think everybody needs to know that that missing link occurs, because Ms. Williams and I made active efforts to try to find it, and I don't know whether the House Managers have it, I don't know whether Mr. Doar had it, I don't know whether Mr. Weingarten had it. I don't believe any of them do, and that's Hemphill Pride's telephone records.

And I'm still a little bit disturbed by the fact that we, under the rules of procedure, sought, as I believe did Mr. Weingarten on behalf of the Government, to obtain Mr. Pride's telephone records for the various telephones that he may have utilized either in his name or where he worked in Columbia, South Carolina, and to this day I have not had an opportunity to review any telephone records of his in great consequence. I believe we had a limited number, but not to the extent that we have the Borders telephone records and the Hastings telephone records, and to me that is still a missing link. I talked with Hemphill a lot, Professor Anderson, and there is no record of that having transpired.

Mr. ANDERSON. Let me, just since we are on that topic, Judge—you attempted to subpoena those records or Ms. Williams did for preparation for trial?

Judge HASTINGS. Sure, we did, and I believe also did Reid Weingarten, who was the prosecutor in the original case in 1983.

Mr. ANDERSON. And to the best of your recollection, they were not produced?

Judge HASTINGS. Do you have them, Professor Anderson?

Mr. ANDERSON. To the best of my recollection, I don't, Your Honor.

Judge HASTINGS. All right.

Mr. ANDERSON. Now, again, let me come forward a bit. That was May 26th. House Exhibit 24 in evidence indicates that the suit against President Reagan by Mr. Borders was filed on June 8th. Again, was that an event that you can recall having discussed with him?

Judge HASTINGS. Oh, yes. I talked with him about it, I talked with other people about it. I talked with associates of his and mine. I don't recall a conversation with McCrary, but somehow or other I know that Borders talked with McCrary.

Mr. ANDERSON. Well, why would he talk with Jesse McCrary?

Judge HASTINGS. Because Jesse holds himself out and I have great respect, as do others, his ability in the area of constitutional law. That's an area that he particularly enjoys and has had some real celebrity established, not only the cases that he took to the United States Supreme Court or the case that he took to the United States Supreme Court, but the several that he has taken and won at the District Court level and at the Florida Supreme Court level, based on constitutional issues, either the United States Constitution or the Florida Constitution.

Mr. ANDERSON. His reputation in constitutional would have been known among the National Bar Association?

Judge HASTINGS. Yes, a lot of us looked to Jesse, like we did Dean Nabritt and Herb Reid and Frank Reeves here in Washington, DC at another point in time.

Mr. ANDERSON. So, if there were records reflecting calls from Mr. Borders to Mr. McCrary about this time, it might concern that?

Judge HASTINGS. You know, that's that area of speculation. It would be my guess that Mr. McCrary and Mr. Borders talked about his lawsuit, it was something that Mr. Borders was genuinely pleased with.

Mr. ANDERSON. Now, Judge, let me ask you again to look at your itinerary——

Judge HASTINGS. Yes, sir.

Mr. ANDERSON [continuing]. And let me see where we are at. Did you make a trip to Washington in June of 1981, if you recall?

Judge HASTINGS. June 1981?

Mr. ANDERSON. Yes.

Judge HASTINGS. It doesn't show on this itinerary. If I did, I'd have to see other records regarding that. The first trip that shows on the itinerary as prepared here is July 17th.

Mr. ANDERSON. Well, there has been, I think it is House Exhibit 97, which suggests that there may have been a trip in June.

Judge HASTINGS. I don't doubt that.

Mr. ANDERSON. But you have no specific recollection of it, as we sit here?

Judge HASTINGS. If I could see it, I'm sure that I could have something come back in my memory. I'm looking here at the churches and other places, the Florida Bar Convention, I'm looking at this for the first time in a long time and I have a memory of that, so if I could see it, I believe I would have a memory of it, so I don't deny that it occurred.

Mr. ANDERSON. OK. As we sit here today, without being able to see something, you don't know what it would have been about?

Judge HASTINGS. I really don't.

Mr. ANDERSON. Let me ask you about that, Judge. Would you have made trips during that year that would have been reflected on this itinerary?

Judge HASTINGS. That's distinctly possible, and some of these particular trips—well, hold on.

Until we get to October, all of these trips were made, but, yes, I may have made other trips that aren't reflected on this itinerary and some of these may not have been attended as reflected on this itinerary.

Mr. ANDERSON. Let me move forward to July. The House exhibit, the Decision in *United States* v. *Borders* indicated that I believe that suit was—the decision favorable to Mr. Borders was handed down on July 7th.

Judge HASTINGS. All right.

Mr. ANDERSON. Do you recall discussing that with——

Judge HASTINGS. I'm telling you, the man was ecstatic and I'm sure that he called me to let me know, but I'll bet you he called a lot of other people as well, and I don't have any way of knowing who those persons were, but he surely called me. It was something that he was really, really proud of.

Mr. ANDERSON. Now, in that period, Judge, there is in evidence through the House, I think it is House Exhibit 110, an indication that the following weekend Mr. Borders flew down to Fort Lauderdale or Miami. Do you recall that trip?

Judge HASTINGS. During——

Mr. ANDERSON. This would be July 11–12, I think you may have been sitting in Key West. Do you have any specific recollection today of those events?

Judge HASTINGS. That's easy to remember.

Mr. ANDERSON. Share them with the committee, if you would.

Judge HASTINGS. All right. Borders and I had had conversations and he had indicated to me that he was going to be in Florida and he asked if I would meet with him at that point in time and we could go over to McCrary's and socialize. I came up from Key West, Florida. I don't have an exact memory as to whether or not I arrived at the Miami International Airport first or he did, but I do believe that we left Miami International Airport together and went to Jesse McCrary's house. And why it is so easy to remember is Jesse and I drank whiskey for 3 or 4 hours, and Jesse's house is a house that has a Florida room at the back of it and has a dining room that's situated on an elevated kind of area, with a very, very pretty dining room table seated there.

Jesse and I talked almost all that afternoon, back and forth, about different things that people would talk about, and if William Borders said 50 words, I would eat all 50 of them. He sat at that table during all that period of time, and at some point he said that he wanted to go, and we left McCrary's house in my car, and when we got in the car he asked me to take him to a taxi where he could catch a taxi—different than in DC and Miami, it's not easy to hail a cab, so to speak. I left him off at a taxi area and that's the last I saw of him during that period of time.

I thought it was very strange that he sat there for as long as he did and did not say anything.

Mr. ANDERSON. Now, Judge, there is in evidence at this point in time that Mr. McCrary——

The CHAIRMAN. Counsel, could you just clarify, what date are we talking about here?

Mr. ANDERSON. We are talking about the period July 11th and 12th, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. ANDERSON. There is in evidence through the House and testimony that Mr. Borders and Mr. McCrary had a mutual client at this period in time, a man named William Dredge.

Judge HASTINGS. Sure.

Mr. ANDERSON. Do you recall whether they discussed that case in your presence?

Judge HASTINGS. They didn't discuss William Dredge in my presence then or at any point in time. The first memory that I have of a person named William Dredge was something that I still find passing strange, and that is when William Borders asked me to prepare something called a character affidavit for a client of his that had a problem in Baltimore, and I categorically, out of hand, rejected it and he said, so, fine, and that was the extent. And when that occurred—I don't have a distinct memory, but it occurred here

in Washington, DC—McCrary and Borders didn't say one word to me about William Dredge or any other mutual client that they may have had.

Mr. ANDERSON. Judge, let me move from that weekend to the next, and let me show you what has been marked Respondent's Exhibit No. 147 and see if you can identify it and what it does for your recollection.

Judge HASTINGS. All right, sir.

This is my handwriting and Respondent's Exhibit No. 147 is a reservation confirmation and it's a composite exhibit, and the second page is the bill that I had there at the Mayflower Hotel. I believe that this was in connection with an American Bar Association Standing Committee of Professional Practices and Discipline.

Mr. ANDERSON. Now, how long did—were you a member of that Standing Committee, Judge?

Judge HASTINGS. I was a member of that committee for in excess of 3 years, close to 5 years, I believe, but certainly 3 years. I have a distinct memory of serving on that committee.

Mr. ANDERSON. And were there particular areas of that committee's work that you were more active in than others?

Judge HASTINGS. The ABA committee?

Mr. ANDERSON. Yes.

Judge HASTINGS. Well, we were about the business then of establishing—it was an extensive study and it interfaced with the Cutak Commission study and it also faced with the King Commission study that was going on for admissions for lawyers to practice in Federal court. So, to say that I was involved in some aspect of it more than others, we were preparing a major draft to be submitted to the General Assembly of the American Bar Association having to do with the discipline of lawyers, and the area that struck me for more concern, interestingly enough, was the administrative law area, where there is very little in the area of, at least until that time, regulation discipline-wise of lawyers appearing in administrative bodies, particularly here in Washington, so I spent a lot of time on that. But the committee, it was some of the most exciting work that I did, aside from being on the bench, and so I was actively involved.

Mr. ANDERSON. You're falling into an era, which you don't usually do, of using jargon. What was the Cutak Commission?

Judge HASTINGS. The Cutak Commission bore the name of an individual whose name was Cutak and it was commissioned by the American Bar Association with a group of members to make an appropriate study—I forget the exact nature, but it interfaced with our commission——

Mr. ANDERSON. That would have been concerning the rules of professional conduct?

Judge HASTINGS. Mr. Anderson, I just can't remember, but it was really important at the times, yes.

Mr. ANDERSON. And what was the King Committee?

Judge HASTINGS. Judge James Lawrence King, who appeared here, had been commissioned to formulate standards for pilot studies to be conducted in either 11 or 12 districts, and I had a particular interest in that and, as a matter of fact, wound up as co-chair

with Judge Edward Davis in our district, and that's where I met you for the very first time.

Mr. ANDERSON. I've often wondered why I accepted that chore.

The CHAIRMAN. Mr. Anderson, we are about an hour and 20 minutes into the witness' testimony. At this time, I think we should take a very short break and come back in about 10 minutes, so that all of us could get a rest.

Mr. ANDERSON. Thank you, Mr. Chairman.

[Short recess.]

The CHAIRMAN. The Committee will come back to order.

Mr. Anderson, if you would continue.

Mr. ANDERSON. Thank you, Mr. Chairman.

Your Honor, I think we had done a little excursus on King committees and Cutak commissions.

Judge HASTINGS. Yes.

Mr. ANDERSON. Let's turn to the weekend of July 17-20, when you were at the meeting in Washington. As you recall your practice or if you recall specifically, did you or would you have called Bill Borders to let him know you were coming to town?

Judge HASTINGS. Bill Borders, as well as countless other individuals in that knit circle that I've talked about, pick each other up from airports and have lunches, dinners, et cetera, and it is not uncustomary. The answer to your question is yes, I did call him or he called me and he knew that I was going to be in Washington, and, yes, I did meet with him during that period of time when I was in Washington.

Mr. ANDERSON. Well, tell me a bit about—where did you meet with him, if you recall?

Judge HASTINGS. I had lunch with him and, if I'm not mistaken, it would have been at the Mayflower. What I do remember—and Judge Matthew Perry was here—Judge Perry had a young man that he had clerk with him when he was on the Military Court of Appeals. That young man, I only know his first name, I believe it's Bob. But I do remember that a part of why Bill Borders and I got together at that time was to have Bob over for lunch, and what Bob was bringing was, he had used Lexus or some search in regard to Hemphill's ongoing matters, and he was telling us about that, and that was the primary reason that we got together at that particular point in time.

Mr. ANDERSON. Well, did you make arrangements to get together again during that weekend?

Judge HASTINGS. Yes.

Mr. ANDERSON. Well, can you tell us——

Judge HASTINGS. We were supposed to have dinner, we meaning William Borders, Noel Smith, Brenda Russell, Danny Russell, and a woman whose name is Connie—I do not know her last name—we were supposed to have dinner together. Noel Smith, myself, Danny Russell and Brenda Russell had dinner at the Lion D'Or, and William Borders never came. He indicated that he would be there and he never did come.

Mr. ANDERSON. Now, Judge, did you ever confront Mr. Borders or ask him about that?

Judge HASTINGS. I asked him about that one and I asked him about not coming to the Fontainebleau at another point in time,

and in each instance it passed off him like water off a duck's back. All he did was laugh and go on to the next subject, whatever that was.

Mr. ANDERSON. Judge, let me move forward—July appears to have been a fairly busy month—to the period July 26th to July 31st. As a matter of convenience, however, for myself and Casey—and I hate to put you to work—can you tell me what exhibit numbers are on your table, other than the itinerary?

Judge HASTINGS. Yes, sir. Exhibits 110, 135, 146, Exhibit No. 139 and No. 147.

Mr. ANDERSON. Mr. Chairman, with the exception of 139, it is in evidence, I move that the remainder of those be admitted at this point.

The CHAIRMAN. Is there objection to them?

Mr. BARON. If we could check again exactly which ones they are.

Mr. ANDERSON. They are the hotel bills and the correspondence we've just mentioned about.

The CHAIRMAN. Can we have counsel state again for the record the numbers of the exhibits that are being offered?

Judge HASTINGS. I gave them——

Mr. BRYANT. We have 146, 110A, 135A and 147.

Mr. ANDERSON. For the record, Mr. Chairman, 135A is a sub-part. It is an itinerary for Judge Hastings, prepared by Ms. Williams for the period May 5th through May 7th. 147 is the confirmation and bill from the Mayflower Hotel for the period July 17th through the 20th, I think. 110A is the opinion of the South Carolina Supreme Court imposing indefinite suspension on Hemphill Pride. And 146 is a composite of the correspondence leading to Judge Hastings' speech at the New Jersey Juvenile Association.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked Respondents' Exhibit Nos. 110A, 135A, 146 and 147 and were received in evidence.]

Mr. ANDERSON. Judge, I've placed before you what has been marked Respondent's 179 for identification. Can you identify that?

Judge HASTINGS. Yes. Exhibit No. 179 is the program for the National Bar Association's 56th Annual Convention that was held in Detroit between the dates of July 26th and August 1st of 1981.

Mr. ANDERSON. And were you at that meeting, Judge?

Judge HASTINGS. Yes, I was.

Mr. ANDERSON. Let me show you what has been marked Respondent's 130 and was also marked Defendant's 55 at your trial, and ask you if you can identify that?

Judge HASTINGS. This is my hotel bill at the Detroit Plaza Hotel for 3 nights during the period 7-26 through 7-30-81.

Mr. ANDERSON. Now, Judge, looking at that program, were you successful in persuading people that a dinner honoring President Carter if Griffin Bell should be scheduled?

Judge HASTINGS. I don't believe so, and I haven't looked at the program, but I don't recall either President Carter or Attorney General Bell ever appeared at a National Bar Association function.

Mr. ANDERSON. Judge, directing your attention—while at the meeting, Mr. Pride testified that some people called him from the convention. Do you recall that telephone call?

Judge HASTINGS. I sure do. It was initiated by Bill Borders and there were at least 11 of us in the room and there may have been more, but each person in that room spoke with Hemphill Pride, and our plight at that time was to have him attend the meeting and we were trying to get him to come there to make him feel comfortable and to reorient himself, if you will, with the membership.

Mr. ANDERSON. Is it fair to say you were reaching out to try and make him come and feel like a lawyer?

Judge HASTINGS. I would think that was reaching out to him, there's no question.

Mr. ANDERSON. Now, Mr. Pride has also testified at that time that subsequent to that he received an unsolicited, I think $750.

Judge HASTINGS. Yes.

Mr. ANDERSON. Were you present when those funds were——

Judge HASTINGS. Yes, it was sort of like hat-passing, again, spontaneous and initiated by William Borders, and I'm sure that I made a contribution to that particular effort. I don't remember exactly what it was, but I did make a contribution and it amounted to some $750 which was sent to Hemphill.

Mr. ANDERSON. Judge, I realize it's a long time ago, but do you have any specific recollection of conversations at this convention with Mr. Borders regarding Hemphill?

Judge HASTINGS. Oh, indeed. I don't recall a single time during this period and beginning with Hemphill's indictment and dating all the way up, that at any point in time that I spoke with William Borders, I don't believe that there was ever a time that we did not have something to say, either him initiating it or me, about Hemphill Pride. There's no question that we talked about him. Where and when, I don't know, but right in that room it was patently obvious that everybody's central concern for at least a period of time was Hemphill Pride.

Mr. ANDERSON. And do you recall the content of your conversation with Mr. Borders at this period with any specificity?

Judge HASTINGS. Always at this particular point in time about his financial status and about the restoration of his licensure to practice law.

Mr. ANDERSON. Judge, this meeting occurred fairly shortly after your—I guess it occurred during, but also after some significant activities in the *Romano* case.

Judge HASTINGS. Yes.

Mr. ANDERSON. Did you have any occasion to discuss that there?

Judge HASTINGS. I remember vividly discussing the forfeiture aspects as it pertained to the RICO statute, and the RICO statute more specifically, because lawyers get together and they share war stories, judges and lawyers get together and share war stories, and the RICO statute was breaking at that time and I was alerting these lawyers that it was something that they needed to be particularly mindful of and to pay attention to it.

I don't remember mentioning the *Romano* case by name. I do remember saying that I had a case that had the aspects of RICO and forfeiture in it and I did discuss it in that same room with the individuals that were there, and at some point I'm sure that, as we are in this room, I had the floor when I was discussing it, so to speak.

Mr. ANDERSON. Well, let me move now, Judge, to the month of August.

Judge HASTINGS. All right, sir.

Mr. ANDERSON. Mr. Pride has testified, as I understood him, that this was the period when he was concerned about arranging a meeting and how he should handle Chief Justice Woodrow Lewis.

Judge HASTINGS. Yes.

Mr. ANDERSON. As far as I can determine, as far as the records that are produced, there is no evidence of any contact between you, Mr. Pride or Mr.——

Mr. BARON. I would like to object. We have now had a series of leading statements and not any questions. Could we have some questions put to the witness that are not leading?

Mr. ANDERSON. Mr. Chairman, these are facts in evidence and I think I am entitled at this point to orient the witness as to where we are going. I don't think any of them are in dispute.

The CHAIRMAN. Counsel, you can do a certain amount of orienting. I do think this witness is quite oriented on the facts in the case, so I do think he is capable of responding to questions on almost any aspect of it.

Mr. ANDERSON. Judge Hastings, do you recall having had conversations with Hemphill Pride in the month of August?

Judge HASTINGS. I can't pinpoint a specific date. Suffice it to say that there came a time that Hemphill Pride called me concerning the fact that he had made a speech criticizing the then Chief Justice of the South Carolina Supreme Court Woodrow Lewis, and he asked my advice regarding an upcoming meeting he was to have with the Chief Justice as to what he should do.

Now, I've searched actively in my memory about that, because I identified during the course of my trial an 18-minute conversation that took place on Patricia Williams' telephone that was directed to her mother-in-law's home in Columbia, South Carolina.

I know that Hemphill and I talked for a very long time about this particular matter, that is, his upcoming meeting with the Chief Justice of the South Carolina Supreme Court. It would be my belief now that such a call must be on some record of his. It may come as a surprise to you, Professor Anderson, but I've not gone back into my own telephone records to determine if the call was on my telephone records, but I do distinctly remember having a very lengthy conversation with him, and I believe that the testimony as reflected by Mr. Pride was that we did talk about the Chief Justice and his upcoming meeting with him.

Mr. ANDERSON. Judge, let me move on a bit. We do have some documentation. Let me show you what have been marked as Respondent Exhibit 156, Respondent's Exhibit 86, and Respondent's Exhibit 131, and ask if you can identify those.

Judge HASTINGS. I can identify them, Professor Anderson.

Mr. ANDERSON. Take them one at a time, if you would, Judge, by number.

Judge HASTINGS. In sequential order, Respondent's Exhibit 86 is a letter indicating that I am sending a check to Barbara Whiting, who was one of the facilitators of the October boat ride that ultimately took place.

Respondent's Exhibit No. 131 is an August 27th check, over my signature, paid to the order of The Gala Celebration for the President of the NBA, which is how I was directed to send the check.

The August 24, 1981, is Respondent's Exhibit 156, and it's a letter from Barbara Whiting directed to me, and it's of a form type and here she is setting out the proposed agenda, who the coordinators are, and the menu for the affair, and some other particulars having to do with the location of the boat that we were to go on.

Mr. ANDERSON. Judge, what was the affair you referred to, what was that?

Judge HASTINGS. This was a boat ride that was honoring William Borders for the number of things that he had done in his capacity as President of the National Bar Association.

Mr. ANDERSON. And had Mr. Borders' term expired by this point, if you know?

Judge HASTINGS. It either had expired or was expiring, yes.

Mr. ANDERSON. Now——

Judge HASTINGS. I think it had expired.

Mr. ANDERSON. Her name is in the record and I think her prior testimony is before the committee. Who is Barbara Whiting?

Judge HASTINGS. Barbara Whiting was a lawyer here in the Washington area at that time. I have not spoken with Mrs. Whiting in a number of years, so I don't know where she is, but she was a good friend of William Borders, a functionary in the National Bar Association, and she was among the prime movers of sponsoring this particular affair. My belief is that at some point she was a director of one of the regions that contemplates the District of Columbia of the National Bar Association.

Mr. ANDERSON. Now, Judge, looking at those exhibits, if you need to refresh your recollection, when was the dinner cruise originally scheduled to take place?

Judge HASTINGS. It was originally scheduled to take place on October 16, 1981, on a Friday.

Mr. ANDERSON. And you agreed to be a sponsor and sent your check?

Judge HASTINGS. I agreed and sent my check 3 days after receiving the letter from Ms. Whiting.

Mr. ANDERSON. Judge, let's move forward to September. Could you consult the itinerary, the main exhibits before you to refresh your recollection, and tell us what your travel plans were as shown on your secretary's schedule for the month of September 1981?

Judge HASTINGS. In the month of September, what's shown here on the itinerary is 10–11, Washington, DC, September 14th, Harrisburg, Pennsylvania, September 19th, Orlando, Florida, and September 22nd, Gainesville, Florida, for the Zora Neale Hurston dinner.

Mr. ANDERSON. And do you recall how far in advance your trip to Harrisburg had been arranged?

Judge HASTINGS. I don't recall how far the trip had been arranged, but I had been asked to come to Harrisburg some substantial period before this particular September 10–11 period.

Mr. ANDERSON. Judge, let me show you what has been marked Respondent's No. 94 for identification, and ask if you can identify it—not for identification, it is already in evidence, but let me show you a copy to refresh your recollection.

Judge HASTINGS. All right, sir.

This would signify, Mr. Anderson, that Gary Ira O'Connor, a detective and Chairman of the Education and Training Committee of Lower Gwynedd Township Police Department, in Spring House, Montgomery County, Pennsylvania, had invited me July 29, 1981, to participate in the Pennsylvania Juvenile Officers Association that was being held in Harrisburg, Pennsylvania. I confirmed that I would participate on September 3rd and indicated what my then scheduled itinerary was and, in addition thereto, there is the program and the agenda for the training session that was there in Harrisburg, Pennsylvania.

Mr. ANDERSON. Now, Judge, did you have occasion to discuss your plans for that trip with Jesse McCrary?

Judge HASTINGS. I certainly did.

Mr. ANDERSON. How did that come about?

Judge HASTINGS. I was visiting Jesse McCrary's office one day in advance of this particular period of time and talking with him, and he indicated to me that he had a speech in Norfolk, Virginia, and he was speaking for the YMCA, and a mutual friends of ours, who is now the President of Telladega College in Alabama, was then a vice president of a college there in the Norfolk, Virginia area. Jesse indicated to me that he was going to come to Washington, DC from Norfolk, and I indicated to him that I was going through Washington or at least that I could be there and he and I could get together en route to Harrisburg, and I set aside that particular weekend purely to socialize with Jesse McCrary and others at that point in time.

Mr. ANDERSON. Did you have occasion to discuss your itinerary with Bill Borders?

Judge HASTINGS. Yes, I did. I believe in advance of coming to Washington, DC, I told Bill Borders that I would be in Washington, DC, and when Jesse and I had made our plans, I'm sure that in advance I told Bill Borders that I would be at the Sheraton Hotel and, Professor Anderson, I believe if you go back you will find that Jesse McCrary indicated that he may have told not only Bill Borders but others as well at another point in time, not before the Senate.

Mr. ANDERSON. Well, looking at your itinerary, Judge, as you communicated it and as Ms. Williams reconstructed it, when were you initially scheduled to go to Washington?

Judge HASTINGS. I was initially scheduled to go to Washington, DC on the 10th, it appears on this itinerary of 1981.

Mr. ANDERSON. And is that consistent with your correspondence with the—I've forgot his name, but the officer you were making——

Judge HASTINGS. O'Connor?

Mr. ANDERSON. Yes.

Judge HASTINGS. Yes.

Mr. ANDERSON. Do you have a recollection, Judge, as to why your plans changed?

Judge HASTINGS. Yes, I just told you, McCrary and I agreed that we would meet in Washington during that particular period of time, but I don't have any other recollection of any calls for a change of plans.

Mr. ANDERSON. Well, did you fly to Washington on the 10th?

Judge HASTINGS. I didn't—I don't remember whether I flew to Washington or not on that particular date. I can only tell you that ultimately during that weekend I came to Washington. My believe is that I may have flown to Washington on the day of the 11th. I'm not certain, but you will have to show me telephone records—I mean travel records.

Mr. ANDERSON. Judge, let me show you what has been marked Respondent's Exhibit No. 88 for identification and see if that helps you. Can you identify that?

Judge HASTINGS. This is from the calendar in my office, bearing two dates in the year 1981, September 10th and September 11th.

Mr. ANDERSON. Is that a copy of what Ms. Carter has referred to as a courtroom diary?

Judge HASTINGS. I wasn't here when Ms. Carter testified, but I'm sure that is what she must have said. I was here when Ms. Williams testified and I believe that's what she said.

Mr. ANDERSON. What were you doing on September 10th, Judge?

Judge HASTINGS. On September 10th, I was in a jury trial of *United States of America* v. *Felix VcNair*, he was "Felix the Cat" VcNair. That's not on here, but Bill Hirschhorn was his attorney. I also had other hearings on that particular day. It does appear that one of our prominent black attorneys was before me, James Burke, who was a member of the House of Representatives, and in addition, I had a rather substantial hearing on that day regarding the Haitian refugees—if I say substantial, all of it having to do was that was—and there was another sentencing as well on that particular date.

Mr. ANDERSON. And looking at the extract for September 11th, what were you doing on that day?

Judge HASTINGS. Still in that trial, the trial ended and I left and went to the Washington—excuse me, went to the Miami Airport to come to Washington, DC.

Mr. ANDERSON. Now, using that as a guide, Judge, were you able to travel on September 10th?

Judge HASTINGS. No, sir.

Mr. ANDERSON. Do you have any specific recollection of who you would have called to advise in the change of your plans?

Judge HASTINGS. I know that Bill Borders was supposed to pick me up and my belief is that I would have called him and advised him that my plans had changed.

Mr. ANDERSON. Judge, looking at that calendar, can you refresh your recollection and the committee's, what day of the week was September 10th?

Judge HASTINGS. September 10th of 1981 was a Thursday.

Mr. ANDERSON. Now, at or prior to that time, did you know what Bill Borders' plan were for the weekend of September 11-12?

Judge HASTINGS. Sometime previous to that or in the telephone conversation when I indicated to him that I was coming to Washington, Mr. Borders advised me that he was going to be at a family reunion in Florida, and I believe he said Fort Pierce.

Mr. ANDERSON. Now, again I realize it is along time, but as you look at the court diary and remember "Felix the Cat" and Mr.

Hirschhorn, do you know on September 10th whether you knew when that trial would end?

Judge HASTINGS. No, but in every instance you can begin to get a feeling when it is coming to an end, but I don't know that I knew at that point in time the exact time that it would end. It was my hope that it would end and I would be able to accomplish my travel.

Mr. ANDERSON. And again looking at September 11th and refreshing your recollection, what did in fact happen?

Judge HASTINGS. The case went to the jury, Mr. VcNair at some point was convicted, I was then able to go about my business and I left from the Miami courthouse. I have a distinct memory that day of running into an enormous traffic jam at what was then a toll plaza that you had to pay a quarter to go through on the Dolphin Expressway, and I mean I didn't think I was going to make the plane that ultimately was very late anyway.

Mr. ANDERSON. Well, did you ultimately make the plane?

Judge HASTINGS. I made a plane, and that plane was delayed considerably. It was an Eastern Airlines flight and it had landing gear problems and we were told by the gate attendant often that it would be 30 minutes, one time he would say it will be another 30 minutes, and ultimately that flight left I believe around 6:30 in the evening.

Mr. ANDERSON. Now, Judge, again, do you recall any telephone conversations advising Mr. Borders or his office of your——

Judge HASTINGS. I called his office twice. I don't have a distinct memory of having spoken with him either time. I also called Shirley Ross, with whom I was to have dinner, I called her twice. I remember speaking with her once. I don't remember speaking with her twice.

Mr. ANDERSON. Now, who was Shirley Ross?

Judge HASTINGS. Shirley Ross was a person that I had met at an Urban League convention and I had asked her to dinner and she agreed that she would go to dinner with me.

Mr. ANDERSON. And you had asked her to accompany you to dinner on the 11th?

Judge HASTINGS. I had asked her to accompany me to dinner when I was in Washington, DC.

Mr. ANDERSON. And when did you call her in connection with these plane changes?

Judge HASTINGS. As the plane would be further delayed, I called Mr. Borders' office, I also called Ms. Ross' office and advised her that the plane was delayed.

Mr. ANDERSON. Judge, before I try and clean up your tabletop again, would you look for a moment at Respondent's Exhibit No. 88. As I see it on that courtroom diary, there is another label. What does that say at the bottom?

Judge HASTINGS. Defendant's Exhibit No. 9.

Mr. ANDERSON. Now, a number of the exhibits that we have put in have labels like that, Your Honor. Can you tell the committee what those labels mean?

Judge HASTINGS. In this particular instance, I believe it would mean that during the 1983 trial, that Ms. Williams offered through me or someone this as an exhibit that ultimately went into the offi-

cial record of the *United States of America* v. *Alcee L. Hastings* in 1983.

Mr. ANDERSON. And the Defendant's exhibits offered at that trial were similarly marked——

Judge HASTINGS. Indeed, they were.

Mr. ANDERSON [continuing]. And they looked like that?

Judge HASTINGS. Indeed, they were.

Mr. ANDERSON. Mr. Chairman, at this time I would move the admission of Respondent's 86, 121, 156, and 94 and 88 into evidence.

The CHAIRMAN. Is there objection to any of those exhibits?

Mr. BRYANT. No objection.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 86, 121, 156, 94 and 88 and were received in evidence.]

Mr. ANDERSON. Judge, do you recall what time your plane finally left Miami for Washington?

Judge HASTINGS. I believe it was at 6:30 p.m. or thereabouts.

Mr. ANDERSON. And do you recall approximately what time you arrived?

Judge HASTINGS. Whatever the distance is from Miami to Washington, it would have been after 8:00 o'clock, shortly thereafter.

Mr. ANDERSON. Now, taking that period of time, can you tell the committee what happened from the time you got off the airplane until you arrived at the hotel?

Judge HASTINGS. Sure. On that particular day, when I got out of the plane, came into the Washington National Airport to get my luggage at the luggage carousel, there was a delay—I don't remember the name of the lawyers, but we had kind of associated with each other, two lawyers from Miami, throughout the delay in Miami and the delay waiting for the baggage.

I got my baggage, I went to a taxicab, I took the taxi and—I don't remember where Ms. Ross lived, but I know she lived near Walter Reed Hospital, and we went in that direction toward Walter Reed Hospital, to wherever it was she lived, and the taxicab driver got lost. We went around and around often during the period that he was trying to assist me to find that particular place, so much so that, at one point we stopped at a convenience store and I called Ms. Ross and told her that we were looking for her residence. We finally got to her residence and Ms. Ross was not ready, probably for the reason of the inordinate delay, but it took her some time before she came out, and then we went to wherever the hotel was and went and had dinner. We were the last people, near the last people that were ordering dinner on that particular evening, we had dinner and chatted, and she left and went home and that was the extent of that evening.

Mr. ANDERSON. Do you recall what hotel you stayed at that weekend, Judge?

Judge HASTINGS. The Sheraton.

Mr. ANDERSON. And that's where you had dinner with Ms. Ross?

Judge HASTINGS. That would be where I had dinner with Ms. Ross, that would be where I had dinner the following night with other people.

Mr. ANDERSON. Now, in your conversations with Mr. Borders in advance of this trip, had he told you specifically his flight plans?

Judge HASTINGS. No.

Mr. ANDERSON. Judge, the suggestion has been made, so let me ask you straight out. Did you see Bill Borders at the Washington National Airport on the evening of September 11th?

Judge HASTINGS. I didn't see Bill Borders at the Washington Airport on that evening, not at all.

Mr. ANDERSON. Did you see him anywhere on that date?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Have you since learned, Judge, that there was an attempt by the FBI at surveilling both you and Mr.—I've got to stop that, I can't use that word, it's not an adjective—did you learn that the FBI tried to watch you and Mr. Borders on that day?

Judge HASTINGS. Yes.

Mr. ANDERSON. And has anyone ever come forward with information showing the two of you were ever seen together?

Judge HASTINGS. No.

Mr. ANDERSON. Now, were you at the Sheraton on Saturday, September 12th?

Judge HASTINGS. Yes.

Mr. ANDERSON. Judge, let me ask you as best you can to reconstruct the events of that day as they come to your mind now.

Judge HASTINGS. Yes. Remember that Jesse McCrary and I had agreed that we would socialize. Jesse had a daughter who was a fledgling lawyer, just graduating from Howard University, and she visited with us at some point during the course of the day.

I'm the one who made the arrangements and, contrary to what Jesse testified to, we had two rooms and the parlor for a suite that adjoined each other, two bedrooms. I left the hotel before he arrived and I went to the drug store and the liquor store, and when he arrived we got together and ultimately his daughter came.

Later, the lady who has testified here who at one time was interning with him or clerking with him, Donna Mendez, came. I remember the biggest event of that day that is easy for me to remember, in spite of all of the emphasis that has been placed on Borders' coming, I remember John McEnroe on that day, it was the day that he pitched the real tirade at the linesman in the tennis match. I'm not a tennis buff, but I watch it and I like to watch it, and on that particular day McCrary and I spent time looking at that particular tennis match and I was taken aback by Mc's tirade, if you will. That is why that sticks out in my memory.

I also remember giving Jesse's daughter $50 on that day, and I would had I had more, and I said so to her, as sort of a just a token of my appreciation for her efforts.

At another point in time, the Dabreau sisters came to the hotel and we all continued our socializing——

Mr. ANDERSON. Judge, let me break in. Who? When you say the Dabreau sisters, did you know them beforehand? Why did they come to the hotel?

Judge HASTINGS. They came because I had invited Pearl to go to dinner with us, and Pearl asked if it would be all right to bring Margaret and I certainly saw nothing wrong with that and she brought Margaret, and then there were five of us. Jesse's daughter left—her name is Bonnie—Bonnie left because she had a date and

she advised her dad of the same, so then there were five of us at the hotel.

Mr. ANDERSON. Now, when you say you gave $50 for her efforts, what efforts are you referring to?

Judge HASTINGS. I'm just talking about her graduating from law school, and I didn't consider that a big gift at all, but she calls me Uncle Al and I like her an awful lot.

Mr. ANDERSON. Now, how long had you known Pearl Dabreau?

Judge HASTINGS. I had known Pearl from a trip from Miami to Washington, DC, and I don't remember the exact period of time, but she was coming from Trinidad and I met her on that trip. I also met her fiance at that point in time, whoever he was, when the plane arrived, and I stayed in contact with her telephonically and ultimately I invited her to dinner.

Mr. ANDERSON. Now, Judge, to the best of your recollection, you've mentioned the tennis match involving John McEnroe——

Judge HASTINGS. Yes.

Mr. ANDERSON [continuing]. When did you and Mr. McCrary get together to begin spending time together?

Judge HASTINGS. In that afternoon.

Mr. ANDERSON. And were you together throughout the remainder of the day?

Judge HASTINGS. Off and on, virtually all day. The only thing, I don't think either of us left to go outside the hotel at any point during that day. We made a lot of telephone calls.

You know, Washington, DC is a place where you can get up a party in a hurry, and Jesse and I called people in an effort to get folk interested in a party. One of the people we called was Bill Borders' former law partner, James Cobb, and on that particular day I have a distinct memory of that, that's another of the events that is easy to remember. Jimmy's son had been injured in an automobile accident. Jesse identified it here before the United States Senate as his having broken his leg, but my recollection is that it was an automobile accident and he did suffer substantial injuries.

When we talked at Jimmy's house, we talked with his wife, both of us did, and she obviously was fairly distraught, she indicated that Jimmy had gone to attend to wherever the son was at that point in time, and I don't remember whether Jesse did or I did, but I'm absolutely certain that one or both of us emphasized the fact that we were in Washington and at the Sheraton and at their disposal if there was something that we could do.

Mr. ANDERSON. Now, when you say you talked to Jimmy's house, did you talk by telephone or did you——

Judge HASTINGS. By telephone. That isn't the only person I called that day. I called Joyce McCray that day, I called Turk Thompson that day. Jesse McCrary called other people on that day. We reached out to Dudley Williams, another of Jimmy Cobb's former law partners—all in an effort to try to encourage people to visit with us, or sometimes you would visit with them in a setting like that.

Mr. ANDERSON. Judge, I don't want to poke at privacy, but I guess we had better. When you talk about making a party, as you were making these phone calls and watching the tennis matches, what were you and Jesse doing?

Judge HASTINGS. Drinking and eating.

Mr. ANDERSON. And did those activities persist in the day?

Judge HASTINGS. Professor Anderson, if you were with two people back in the days when I was able to really hold liquor, if you were with Jesse McCrary and Alcee Hastings in a drinking session at any point in time, a lot of liquor was put away, suffice it to say.

Mr. ANDERSON. Now, to the best you can reconstruct it, Judge, you've identified people who arrived, what time did Ms. Mendez arrive?

Judge HASTINGS. I don't remember the exact time. I can remember sequentially. Bonnie was with us for—she was the first person. Ms. Mendez was the second person, and then the Dabreau sisters, and then Borders at some point in time, but indeed that's the sequence. As to the time period, I really, it's no way that I could pinpoint the time that either arrived.

Mr. ANDERSON. Now, while you were—before Mr. Borders arrived, while you were in your apartment, after the two Dabreau sisters and Ms. Mendez, you and Jesse were there, again, what were you doing during that period?

Judge HASTINGS. There were *hors d'oeuvres*, if you will, and there was alcohol, and Jesse and I were drinking and I believe—you know, I really don't know whether the ladies had drinks or not, it would be difficult for me to know that, but I know that Jesse and I did and all we were doing was sitting around talking about things in general. We had all sorts of folk there.

For example, I talked with Margaret Dabreau about obtaining her citizenship and that led us to discuss Haitian refugees and Cuban refugees and immigration policy in the United States. I talked with Bonnie about—I was trying to persuade her to go and study international law. I talked with Donna about entering private practice and methods that one might employ to do that. And in the interim, we were making phone calls and talking with other people who we reached or tried to reach, so there was just general conversation. There was nothing that was earth-shattering or of any consequence. It was people at a gathering shooting the breeze.

Mr. ANDERSON. Let me, just to put that in focus: You and Mr. McCrary were together because you planned to be there, is that right?

Judge HASTINGS. That's correct.

Mr. ANDERSON. And over the course of the evening, at his invitation, Ms. Mendez joined you?

Judge HASTINGS. And I believe that that was, as was the case with Ms. Dabreau, to answer your question, is yes, because I think that was by previous arrangement between McCrary and Ms. Mendez.

Mr. ANDERSON. So, by arrangement or by happenstance, five people assembled in your room?

Judge HASTINGS. Sure.

Mr. ANDERSON. Now, I'll ask you the question because it's there. Did you expect Bill Borders to join with the five?

Judge HASTINGS. No, I didn't expect Bill Borders. I had no knowledge of Bill Borders coming to that room until such time as he came to the room.

Mr. ANDERSON. But in point of fact, Mr. Borders did arrive, did he not, sir?

Judge HASTINGS. Sure he did. Professor Anderson, I believe that something needs to be put forward to the Chairman and Vice Chairman and the Senators and the House Managers at this point in time.

The period that you are talking about, September 10th, 11th, 12th, 13th, and 14th, there was no FBI investigation that produced that period. That was the work of Patricia Williams, Andrew Mavrides, Alcee Hastings and other lawyers that produced that information. And when it was testified to, it would have been just as easy for me to have not said anything at all about that particular period. The FBI did not know anything about it, and when they learned about it, the same kind of charge—this isn't the first time these kinds of charges have been utilized—and when they learned about it for the first time, Reid Weingarten learned about it, was when Ms. Williams had had graphic illustrative charts prepared and he saw it on there and therein began the flurry of activity about this particular period.

Suffice it to say this, that if I was going to have a clandestine meeting with Bill Borders, I could have had that meeting any time, anywhere, without inviting two strangers to a meeting for him to have to see, without having Jesse McCrary or anybody else in the room, I could have, had I known that he was coming, he could have called me in the room, I could have gone downstairs and talked to him, I could have talked to him when I talked to him on the telephone on the 10th and told him I wasn't coming. I could have talked to him the day following. There was nothing stopping me, if I needed to meet with Bill Borders from meeting with him. It just simply did not occur.

Now, I didn't know he was coming there, and when he got there, I have testified that I was surprised, I was surprised then and I still am surprised.

Mr. ANDERSON. Judge——

The CHAIRMAN. Let me just ask if the audience can restrain themselves here, we would appreciate that.

Go ahead, Mr. Anderson.

Mr. ANDERSON. Judge, he did arrive, and let's move to——

Judge HASTINGS. Sure.

Mr. ANDERSON [continuing]. And he did have dinner with you, didn't he?

Judge HASTINGS. Indeed. We were among the last people again. Let me talk about something else. I pride myself in organization, and so does Jesse McCrary, and I don't think signs have anything to do with it, but it just so happens that both of us are Virgoans. I don't know that there's any reservation sheet for the Sheraton Hotel. We were in the hotel. I had been in the dining room, and if we were so meticulous about going to dinner and six people or five or four or three or two, it would have been easy for us to make a reservation. I don't believe such a reservation exists, for the simple reason that it was just a gathering, and surely, surely at some point we were going to eat and surely at some point we did and all six of us did.

Mr. ANDERSON. And the following morning, you had to travel, is that correct?

Judge HASTINGS. That's right.

Mr. ANDERSON. How did you get to the airport, Judge?

Judge HASTINGS. Bill Borders took us to the airport and that's easy to remember as well. When we got downstairs—we hadn't drank all of the liquor and we dropped a fifth of Chivas Regal, and I remember that vividly because we were going to leave it with him, McCrary and I had agreed that we wouldn't travel with it, and so I remember that, that Borders took us to the airport.

Mr. ANDERSON. Now, over the course of your dinner and on the trip to the airport, can you recall any specific conversations that you had with Mr. Borders?

Judge HASTINGS. At some point in time, I knew that Borders was—and in that car, I can't say that that is when this occurred, but at some point during the course of that period of time we are talking about, the 11th, 12th general period, William Borders indicated to me that he would be in Miami at the Fontainebleau at or around 8 o'clock on that following week, on Wednesday.

Now, in the car, I don't have a distinct memory, I don't doubt that it may have occurred again at some point that he may have said something, because at another point in time Mr. McCrary has testified, not here before the Senate, that he does remember that Borders said something about being in Florida, he doesn't remember anything at all about him saying that he was going to be at the Fontainebleau. But William Borders told me at some point during that period of time that he would be at the Fontainebleau the following week, on Wednesday.

Mr. ANDERSON. Had you ever seen Mr. Borders at the Fontainebleau Hotel before?

Judge HASTINGS. The Judicial Council meeting took place at the Carillon Hotel; at some point during the course of that period of time, he asked me to take him to the Fontainebleau Hotel. And I did and dropped him off there. To say I saw him there, I saw him get out of my car and head toward the Fontainebleau. I did not go in with him.

Mr. ANDERSON. Judge, just to orient the Senators, let me ask you to describe the distinction between Miami and Miami Beach and the Carillon and the Fontainebleau so they get a sense of how that layout is.

Judge HASTINGS. Well, Miami is west of Miami Beach, and there are causeways across the Bay of Miami that lead to Miami Beach. The Carillon Hotel is north of the Fontainebleau. The Fontainebleau is right off the Jackie Gleason Parkway and causeways, if you will.

Mr. ANDERSON. At the risk of leading, Miami Beach is really a long island off the coast?

Judge HASTINGS. Sure.

Mr. ANDERSON. And the hotels are just down the beach?

Judge HASTINGS. Right down the strip.

Mr. ANDERSON. Now, Judge, what did you ordinarily do on Wednesdays, if you recall, back at this period?

Judge HASTINGS. Well, just ordinarily on Wednesdays, there in the day, in the United States District Court you're not in trial. But

on this particular Wednesday, and almost every Wednesday that there was a judges' meeting—and I'm not saying that there was a judges' meeting every Wednesday. But any time there was a judges' meeting, whether it was Tuesday, Wednesday, or Thursday, I ate out. But that is not the only time that I ate out in the Miami area. But at that particular time, I knew that I was going to go to dinner.

Mr. ANDERSON. Did you agree to meet Mr. Borders at the Fontainebleau?

Judge HASTINGS. I agreed to meet him there. That was reinforced, I might add. When I came back through Washington, DC, I had a telephone conversation with William Borders, and again he asserted that he would be in Miami at the Fontainebleau at the time. But I didn't arrange for William Borders to come to dinner. I only arranged for Essie Thompson and myself to go to dinner.

Mr. ANDERSON. Now, let me see if I have this. You flew to Pittsburgh and then somehow got to Harrisburg on that Sunday; am I right?

Judge HASTINGS. I'm pretty sure. I don't know whether the itinerary took me through Pittsburgh, but I remember going into Harrisburg. It was right after Three Mile Island, and we went right over Three Mile Island. And I kept wondering why was I in Harrisburg. But as it were, however, I got to Harrisburg.

Mr. ANDERSON. You gave your speech?

Judge HASTINGS. Yes, I remember that because the Philadelphia football team—not to speak so much, but the Philadelphia football team, we had a real good party, the officers and myself, and they were pulling for the Philadelphia football team. So I remember a lot about that.

Mr. ANDERSON. And it's also your recollection you flew back through Washington on your way to Miami?

Judge HASTINGS. Oh, indeed.

Mr. ANDERSON. And that's the time that this further telephone call——

Judge HASTINGS. That's correct. That would have been—if I spoke on a Monday, I believe that would have been on a Monday.

Mr. ANDERSON. Well, the record pretty clearly establishes September 16th fell on a Wednesday and that you did have dinner at the Fontainebleau. Can you tell the committee, the best you can, reconstruct the events of that day?

Judge HASTINGS. I called earlier at some point to Ms. Thompson and asked her to go to dinner with me at the Fontainebleau; went to the Fontainebleau, entered the hotel. There's a place called the Poodle Lounge and Steak House, and I had been to the Fontainebleau. That isn't the first time. The first time I ever went to the Fontainebleau was during the moot court competition when I was a member of the moot court team of Florida A&M University, and the meeting was held in Miami. And that would have been in 1962.

And when we went inside, went toward the Poodle Lounge, and the construction had caused it to change. Somewhere along the line, I either went to the restroom before going into the dining galleries, went into the dining galleries, spoke with a lady and the maitre d', was seated, and did advise them that I was expecting Mr. Borders at that point in time.

Mr. ANDERSON. Now, when you say the lady and the maitre d', can you tell the committee where was the maitre d'? What restaurant was he in and the lady?

Judge HASTINGS. My belief is that you come to one or the other of them first. One says something to you, and the other one seats you. But they were right at the entrance of the dining galleries, and I had made a reservation for two people to come to dinner at the Fontainebleau at the dining galleries.

Mr. ANDERSON. Why only two, Judge, if you thought you were going to——

Judge HASTINGS. Because I knew I was going to eat and Ms. Thompson, and I don't know what Bill Borders was going to do. You know, a lot—people keep making mysteries of things. You can take away place settings, and you can put back place settings. And I don't understand all of the hoi polloi about that. But I only made reservations for two people to eat because that's all I was going to pay for.

Mr. ANDERSON. After you were seated, Judge, did you make any further effort to find Bill Borders?

Judge HASTINGS. I certainly did. I left, and there was a way to go out of the dining galleries which puts you back in this same Poodle Lounge. I went inside the Poodle Lounge. I talked with one of the attendants of the bar and told him that I was expecting Mr. Borders; and if he came in that particular area, to please so advise. I got back to the table, and when I got back to the table, I advised Ms. Thompson that I had been looking for someone from the District of Columbia. I did not mention William Borders' name or anybody else's name to her at all.

Mr. ANDERSON. Did there come a time, Judge, when you learned that that meeting had been fairly actively observed by the FBI?

Judge HASTINGS. Oh, sure.

Mr. ANDERSON. And were the FBI ever able to supply you, or did they supply you with FBI 302 memoranda concerning interviews with the maitre d', the lady or the person in the lounge?

Judge HASTINGS. No, they did not.

Mr. ANDERSON. Did they ever explain why not?

Judge HASTINGS. No, they did not.

Mr. ANDERSON. Now, Judge, you've testified—well, let me ask you, when was the next time you recall having had any communication with Mr. Borders? We're up to Wednesday, September 16th.

Judge HASTINGS. Sometime shortly thereafter, meaning like four or five days, I talked with Borders. There was another reason that he and I were talking a lot during that period of time, and, again, it had to do with the fact that Hemphill was coming through and Borders was supposed to have further conversations with him when Hemphill was en route to Atlantic City. I had another conversation with him, and in that conversation—again, discussing Hemphill—I asked him about the Fontainebleau just in passing. And, once again, he said nothing about why he was not there. And it didn't make any waves to him, and we went on with our conversation.

Mr. ANDERSON. Now, Judge, let me back up just for a minute on this. When did Mr. Pride, if you recall, or when were you told he had gone through Washington?

Judge HASTINGS. Two times.

Mr. ANDERSON. OK. First?

Judge HASTINGS. He certainly went through during the September period, but there's a time that isn't quite clearly documented in any of the record where Pride went to Atlantic City as well. And I was able, in my own investigation, to go forward and find the record regarding that one, and that's where he stayed at the Channel Inn. And the reason that sticks out in my mind is because Pride was supposed to meet me coming back through here in Washington, DC. And Noel Smith and I were at the Four Seasons for lunch waiting for him all day long, and he didn't come. That one sticks out.

The other one would have been through the September period, and that's among the things that Borders and I talked about at that point in time. But to bring you back to where we were, I talked with Borders at some point after the Wednesday Fontainebleau dinner about the fact that he was not there.

Mr. ANDERSON. Now, Judge, you said that for some time you and Mr. Borders had been talking about Hemphill Pride. Can you be more concrete about what you were discussing and what was——

Judge HASTINGS. Professor Anderson, as concrete as I can be, the only things that William Borders and I talked about about Hemphill Pride had to do with his trying to get his law license back and things that we might be able to do to assist in that effort, and getting some money together for Hemphill Pride. And Borders had asked me a lot of times about that, and ultimately I felt constrained to at least push up an effort along those lines. And then I determined that it would be inappropriate, and I planned to tell Pride and Borders that when I would have them together here in Washington, DC, on October the 9th.

Mr. ANDERSON. Judge, I know it's been rehashed too often, but what specifically was Mr. Borders suggesting that you do, if anything?

Judge HASTINGS. More specifically, get up money. The character stuff——

Mr. ANDERSON. How?

Judge HASTINGS. By soliciting from other individuals and over my signature, and I guess that being a United States District Court judge, it may have been Mr. Borders' view that that would cause people to assist. But I didn't do it, and I certainly started to do it. And insofar as the character letters were concerned, I've heard all sorts of testimony about that, but I can tell you this much: It was always in my mind that Hemphill wanted any kind of help he could get from any source to try to help him get his licenses back. And so in Borders' and my conversations, I was the initiator of seeking out folk to write to what I thought was the proper place to write, and that was to the chief justice with whom he had had difficulty and, quite frankly, I thought had a major responsibility in whether or not he was going to have his licenses restored.

Mr. ANDERSON. Judge, let's return to the call after the Fontainebleau between you and Mr. Borders.

Judge HASTINGS. All right.

Mr. ANDERSON. Do you know how the Government learned about that call?

Judge HASTINGS. I don't, Professor Anderson. Right at this moment, if they learned about it, it would have been from me.

Mr. ANDERSON. Well, prior to your trial, did you have by that time copies of your own telephone records?

Judge HASTINGS. I had my own telephone records, and the review that I did of them reflected no such call.

Mr. ANDERSON. Did you have copies of at least that period of Mr. Borders' telephone records?

Judge HASTINGS. I'm pretty sure during that period I had Mr. Borders' telephone records, and since that time, it has been determined that there was no such call from any of his telephone records, office or home.

Mr. ANDERSON. Well, prior to your trial, Judge, I take it you knew pretty much what the Government's theory of the case was, didn't you?

Judge HASTINGS. Oh, sure. Sure.

Mr. ANDERSON. If there was no indication of a telephone conversation in this fairly crucial period in the record, why did you testify about it?

Judge HASTINGS. Because that's what happened. And there is no question about it. If I had wanted to be about the business of trying to secrete information, it would have been just as easy to say that I had no such conversation with him. I said it for the reason that it happened, as I have said countless other things as they happened. But I don't think—maybe, Professor Anderson, you understand it, that Bill Borders and I and other people could talk from other places other than our offices and homes.

Mr. ANDERSON. Well, like how would that happen, Judge?

Judge HASTINGS. I travel around a lot. William Borders travels around a lot. And here, again, you see, we are isolating on nobody but William Borders and Alcee Hastings. There were other people that William Borders and I knew mutually, and the distinct possibility is that any one of us could have called from any number of places.

I have an uncle; I have an aunt; I have cousins; I have friends and associates; and it wouldn't be uncustomary for me to place a long-distance call from any of their places at all. And I would think that would be the case with William Borders, and I would think that would be the case with other people. I haven't always called you from my office or my home.

Mr. ANDERSON. Surely, Your Honor. Unfortunately, lawyers sometimes are more comfortable with documents, so let me return to a document and show you what's been marked Respondent's Exhibit 85 for identification. Can you identify that, sir?

Judge HASTINGS. Yes, sir. This was also a defense exhibit, No. 5, at the trial in 1983. Respondent's Exhibit 85 is over the signature of Barbara Whiting, director of Region 4, and it's changing the date to October 9th for the champagne dinner cruise for William Borders.

Mr. ANDERSON. Do you recall or were you given any explanation as to why the date change?

Judge HASTINGS. Sure. It was for the reason that here in Washington, DC, there were a significant number of judges that were attending a judges' conference. And it was thought by Ms. Whiting

and the other facilitators that many of those persons would want to attend the dinner, and, therefore, they changed it because the judges' meeting was going to take place. And they changed it to October the 9th, and that was done September 21, 1981—or at least her letter to me reflected that.

Mr. ANDERSON. Now, Judge, initially, this was billed sort of as a surprise party for Bill Borders.

Judge HASTINGS. Yeah.

Mr. ANDERSON. Was this a surprise?

Judge HASTINGS. Excuse me?

Mr. ANDERSON. At this stage, was this still a surprise party for Bill Borders, or did he know about it?

Judge HASTINGS. At this particular stage, I'm not absolutely certain. But I'll tell you what I did. I determined—and I don't mean this to be facetious at all, but I determined, knowing a little bit about Bill Borders' comings and goings, that the best thing to do was to tell him before the surprise would be on somebody else. And I told him. And as it turns out, there were other surprises that were much more consequential.

Mr. ANDERSON. Mr. Chairman, at this time, I would move the admission of Respondent's Exhibit 85, the letter from Ms. Whiting and the appended program change.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 85 and was received in evidence.]

Mr. ANDERSON. Now, Judge, let me move forward to October. Let me show you Respondent's Exhibit 97, which is in evidence but at least it may help you. Can you recount for the committee—tell the committee first what that is again.

Judge HASTINGS. All right. This is a travel itinerary prepared—this is Respondent's Exhibit No. 97, prepared by Ms. Williams for me. It also was a defendant's exhibit, or at least is listed as same, No. 18 in the trial in 1983, and it reflects my planned and scheduled travel for the period October the 7th through the 12th, the first portion; the second portion reflects my travel that was planned for October the 14th through October the 22nd.

Mr. ANDERSON. Now, during the two periods where you have travel planned, was that travel outside the Miami area?

Judge HASTINGS. Yes. It was that I was to be in Albany, Georgia, at Albany State College; Washington, DC, for Borders' boat ride; and back to Orlando for a fraternity to speak for them. The second section reflects a trip to Louisville, Kentucky, which was in connection with the American Bar Association Standing Committee of Professional Practices and Discipline. And the 16th through the 21st reflects travel to Columbus, Ohio, where I was scheduled to speak to an organization from Ohio. And, again, October the 22nd reflects a visit back to Orlando, Florida. The reason for Orlando, I would then get a car and go to Bethune-Cookman College where I serve on the Board of Trustees, and there would have been a Board of Trustees meeting during that particular period of time.

Mr. ANDERSON. Now, Judge, let me focus your attention on the period October 1st through the 6th, which became ultimately fairly

crucial. Let me show you what has been marked Respondent's Exhibit 103 and ask if you can identify that.

Judge HASTINGS. All right, sir.

[Pause.]

Judge HASTINGS. Yes, sir, Mr. Anderson. Respondent's Exhibit No. 103 are excerpts from the daily calendar in my chambers for the period Wednesday, September 30, 1981, through Tuesday, October the 6th, 1981.

Mr. ANDERSON. And, Judge, how would you think of the scheduled events in court that period as——

Judge HASTINGS. Heavy. Heavy. Even so much so, if you look on here, you will see a hearing that was set, *Marie Lucie Jean* v. *Doris Meissner*. That was one of the Haitian refugee cases, and that case is set for hearing scheduled to begin at 5:00 p.m. on the 30th, and it was set for two hours. If you look at the calendar call on that Tuesday, you will find that that was an extremely active day. And then I was in a protracted trial, *United States of America* v. *Dominic Santorelli*, and there were other matters as well ongoing throughout that period. But the Santorelli trial was in progress during that period.

That was a loan sharking case and all sorts of other facets.

Mr. ANDERSON. How long did that trial last?

Judge HASTINGS. I don't remember the exact period of it, but it was a pretty lengthy trial. It was not, like Judge King testified, one of our six-month long trials, but it was—I would have to see the full record, but it lasted a little while.

Mr. ANDERSON. And who was the prosecutor in that trial, if you can recall?

Judge HASTINGS. Mike Owens, the gentleman who was a receptor of information from William Dredge originally. The defense attorney was one of the best in the business, E. David Rosen.

Mr. ANDERSON. Now, if we can return to the judicial business, Judge, I'm trying to set in context the events of that time. Let me first show you what's been marked Respondent's Exhibit No. 128 for identification.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Can you identify that for the committee?

Judge HASTINGS. Yes, sir. The writing on the outside in pen is my printing, and it says National Bar Association. This is a hotel bill for the Sonesta Beach Hotel and Tennis Club, and the Florida chapter of the National Bar Association was meeting at this particular point in time, October the 3rd and 4th at this hotel. And I was in attendance at that meeting.

Mr. ANDERSON. Now, Judge, the 3rd and 4th, do you recall what days of the week those were?

Judge HASTINGS. It would have been the weekend, and one of them was a Saturday because I broke away from the bar meeting and went to speak for a very dear friend of mine who was on the District Court of Appeals, which is the intermediary court in the State of Florida, in Florida's hierarchy of courts. His name is Wilkie Ferguson, and a group of people at one of our community centers called the Caleb Center were having a dinner in his honor, and I was the guest speaker for him. And we had a good time.

Mr. ANDERSON. Did there come a time when you learned, or at least it was reported to you that Mr. Borders had attempted to reach you at your house on that Sunday?

Judge HASTINGS. During that same period of time, Borders called my house. I don't remember the exact date, whatever the Sunday would have been, and he spoke with my mother and indicated that he needed to talk with me about Hemphill, or words to that effect as my mother related them to me.

Mr. ANDERSON. Well, in the context of the prior conversations you had with Mr. Borders, when your mother told you he needed to talk to you about Hemphill, what was your understanding of that——

Judge HASTINGS. Same old stuff. Same thing. Money and go on and push up the necessary appeal that was to be circulated. And the list, incidentally, was to be gathered, as I understood it, by him, and he would include Hemphill in determining who it was we should reach out to. But that's all he could have been calling me about at that point in time.

Mr. ANDERSON. Now, Judge, directing your attention back to Respondent's 103, the court diary, can you tell either from your own recollection or just simply from looking at that, where were you on Monday, July 5th?

Judge HASTINGS. You've asked me about July 5th, and you've asked me to look at 103, which reflects September 30, 1981.

Mr. ANDERSON. You had turned pages, Your Honor. I think you will see that it carries you forward.

Judge HASTINGS. No, sir, but you're saying July. You just misspoke. That's all.

Mr. ANDERSON. I'm sorry. The story of my life. I can't get Ms. Vickers' name.

Judge HASTINGS. Now, sir, if you mean October the 5th?

Mr. ANDERSON. October 5th. I'm sorry.

Judge HASTINGS. All right. I was in Miami, and I was in court again with Mr. Owens and Mr. Rosen in *United States* v. *Dominic Santorelli*. I had a status conference in a matter during the noon hour, and that too was a rather protracted case. As I look at it, I see lawyers legion that are involved in that particular one. And I note at the bottom—and this would be Marilyn's notation—that we were in court, actually in court eight solid hours on the day of October the 5th.

Mr. ANDERSON. Now, could I ask that House Exhibit 154 be put in front of the judge?

Mr. Chairman, we're going into a particular event. I would just alert you. I don't know whether you want to recess 2 minutes early and start—October 5th is a fairly big day, and you may want to get a coherent—or we could go on beyond——

The CHAIRMAN. If this is a good break in the testimony, why don't we recess? I'm advised that the caucuses of the Republicans and Democrats will last until 2:15. We'll try to convene at 2:15 or very shortly thereafter and continue with the direct examination.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. The committee stands in recess.

[Whereupon, at 11:59 a.m., the committee recessed, to reconvene at 2:15 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come back to order.

Mr. Anderson, why don't you continue with the direct examination.

Mr. ANDERSON. Thank you, Mr. Chairman.

Judge, when we recessed for noon, I think we had—you talked about the weekend you had spent at the Sonesta Beach, and let me at this time move into evidence Respondent's Exhibit No.——

The CHAIRMAN. Number 128?

Mr. ANDERSON. Mr. Chairman, those are the bills from the Sonesta Beach Hotel over the weekend of October 3–4, if I could move them into evidence at this time.

The CHAIRMAN. Is there any objection?

Mr. BARON. No objection.

The CHAIRMAN. They will be admitted.

[The document referred to was marked Respondent's Exhibit No. 128 and was received in evidence.]

Mr. ANDERSON. And we had gone and you were consulting your diary about the proceedings you had in court on July 5th. Now, what was the principal courtroom activity of that day?

Judge HASTINGS. The principal courtroom activity was *United States of America* v. *Dominic Santorelli.*

Mr. ANDERSON. And can you tell from those records how long you were on the bench that day?

Judge HASTINGS. The records reflect, in Marilyn's writing, that we were on the bench 8 hours.

Mr. ANDERSON. Mr. Chairman, could I ask if we could have House Exhibit 154 put before the Judge, so we could talk about that a bit?

Judge HASTINGS. Thank you.

Mr. ANDERSON. Do those look familiar, Your Honor?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Judge, again, can you tell us where you were when you wrote those letters?

Judge HASTINGS. I was on the bench sometime during the course of the day of October 5th, presiding in the case of *United States of America* v. *Domenic Santorelli,* and there were more people than just one individual in the Santorelli trial.

Mr. ANDERSON. Judge, can you try——

Judge HASTINGS. More defendants, I should say.

Mr. ANDERSON [continuing]. Do you frequently, during the trial do other things?

Judge HASTINGS. Well, there is no question, a lot of the time that's spent on the bench itself, aside from personal correspondence, is also spent reviewing memoranda and proposed orders, motions of the attorneys, calendaring is constantly taking place and I, along with other judges in the Southern District of Florida, we don't have the luxury of having our courtroom deputy—in this case, Ms. Carter, who appeared here, is mine—in the courtroom with us all of the time, so we run the calendar as if we are more things than one. But I do a lot of my personal correspondence and a lot of office work while presiding in jury trials, and I always have.

Mr. ANDERSON. Judge, it would help the committee a bit and this lawyer, how do you manage to—what are your duties as a presiding judge in a jury trial and how do you manage to do other things at the same time?

Judge HASTINGS. Well, the duties at a jury trial are patently obvious and I don't think I need to bore the House Managers or the chairman and the Senators with the duties of any judge. But if there is some confusion here about one being able to divide his or her attention while attending to certain duties, then I don't believe that anybody believes that a judge cannot write a letter or pay a bill with a check and listen to what's going on in the courtroom and decide issues as they arise by way of objections and motions of the respective attorneys. That is commonplace, Mr. Anderson. It's nothing exceptional or unusual at all.

Mr. ANDERSON. Now, Judge, it has been raised, in examining those drafts, there is a problematic issue, that they appear to have been written straight through, with no marking out or corrections.

Judge HASTINGS. Yes.

Mr. ANDERSON. Is that unusual, in your experience?

Judge HASTINGS. I believe that I've written longer drafts, both on the bench and off, that were error-free, and I believe that I've written some that had some errors and some that had a lot of errors. I didn't bother to go into my personal file, Professor Anderson, but if you were to travel with me through all of my papers, you would find many matters along these lines. When I'm in a jury trial, I find it very comfortable to work like that and I don't think it's unusual at all.

Mr. ANDERSON. Well, is it your practice or unusual occasionally for you to write on both sides of a legal pad?

Judge HASTINGS. That, too, is not unusual. I can't give an explanation on this particular instance, but I can assure you that, from the time that I did personal correspondence in college, if you were to find letters to my grandmother or anybody that I wrote, my mom and dad, you would see at the bottom "over" and an arrow, turning the page. That is something that I did a lot.

I don't always use both sides of the page, I could have been down to four or five or six pieces of paper and determine to do that, but that is not unusual. I can find other drafts, if put to the task, that will demonstrate use of both sides of the paper and error-free.

Mr. ANDERSON. Judge, I don't know who did, but let me show you what has been marked Respondent's Exhibit 106 and see if you can identify that.

Judge HASTINGS. All right, sir.

Where did you get this from?

Mr. ANDERSON. If you look at the last page, Judge, I think there may be——

Judge HASTINGS. The reason I ask is I remembered, it's my writing and it's something that I wrote to Judge Tamm and something else as well, just typical of some drafts. Here's one to Charles Cherry, the Editor of the Daytona Beach Times. Judge Tamm was the Chair of the committee that oversees financial disclosure of Federal judges in this country. And the other was a thank you letter, and I don't know to whom it was directed. But these are just

drafts of other things that I may have done at some point in time, and that is what Respondent's Exhibit No. 106 is.

Mr. ANDERSON. And looking at the last page, does it bear an additional marking on it that may refresh your recollection as to where they came from?

Judge HASTINGS. They evidently were introduced in the case of *United States of America* v. *Alcee Hastings*, and it was Exhibit No. 14, it does appear.

Mr. ANDERSON. Judge, is there any way for you to determine when or where you were when you wrote those drafts?

Judge HASTINGS. It would be my belief that I was certainly at the courthouse. It would be my belief that I was in a trial at such time as I wrote them, and I didn't date them, and that's not uncustomary either for me to have done at a given point in time.

Mr. ANDERSON. But you do recognize those as——

Judge HASTINGS. Yes, that's my handwriting and they are drafts of—I do that all the time.

Mr. ANDERSON. Mr. Chairman, I don't know where the originals are, I think they may be with the records the House has, but these are the best available copies to us. I would move the exhibit, Respondent's Exhibit 106, at this time.

The CHAIRMAN. Is there objection?

Mr. BARON. Yes, sir, we object, as lack of relevance to any issue that is before this tribunal.

Mr. ANDERSON. May I——

The CHAIRMAN. Counsel, could you explain your view of the relevance of the documents?

Mr. ANDERSON. Yes, both in questioning of other witnesses and elsewhere, the question of whether Judge Hastings wrote fluidly, without interlineating corrections, whether he wrote on two sides of the paper or whether he conducted his business of his chambers by preparing undated drafts have all been made facts of some consequence.

The fact that on other occasions he has written drafts that provide the committee with the basis and the Senate with the basis for assessing the truthfulness of his claim that the letters for Hemp were written on the bench seems to me, for comparison purposes, these are clearly relevant and they go to a very significant fact of consequence and, indeed, one that members of the committee have raised in their own questioning. I think it is important that the Senate have before it this comparative sample.

The CHAIRMAN. Counsel, did you wish to be heard?

Mr. BARON. Just very briefly, Mr. Chairman.

These are undated, the witness doesn't know where or when he did it, these are two-page, tend to be two-page letters, as far as I can tell, whereas we are dealing with six pages of material there. Indeed, on the front page I see some scratchouts. I just don't understand what the point of it is.

The CHAIRMAN. I will rule that the objections go to the weight that we should attach to the evidence and we will overrule the objection and allow the admission of the exhibit.

[The document referred to was marked Respondent's Exhibit No. 106 and was received in evidence.]

Mr. ANDERSON. Judge Hastings, let me come back now to Monday, July 5th, your jury trial——

Judge HASTINGS. October 5th.

Mr. ANDERSON. October 5th, I'm sorry. For some reason, July seems to stick in my mind, I'm not sure why. There has been repeated frequently the fact that you had a telephone conversation that evening with William Borders.

Judge HASTINGS. Sure.

Mr. ANDERSON. If I could—Mr. Chairman, may I be free to move up that one large exhibit? It might help everyone if I did. It is a House exhibit, the blowup of the telephone conversation.

The CHAIRMAN. You may do so.

Mr. ANDERSON. Now, Judge, I'm not sure how often you've seen that letter, but could you tell the committee one more time what you and Bill Borders were talking about and explain that letter to them?

Judge HASTINGS. The only thing we were talking about, as I've explained over and over and over again, is the concern that Bill Borders had, that he demonstrated to me, that was a shared concern, and that was about Hemphill's financial condition and, in addition, my offering, with reference to the particular letters. He had asked me to prepare them, he had asked me to get an understanding with reference to Hemphill's understanding about, and that's all it was about and that's all that conversation was about.

Mr. ANDERSON. So, Judge, just to be specific, when you said "I've drafted all those letters for Hemp," what were you referring to?

Judge HASTINGS. I was talking about these letters which are House Exhibit 154 in evidence in these proceedings.

Mr. ANDERSON. Now, where were you, if you recall, when you made that phone call?

Judge HASTINGS. I was in my chambers, I'm sure, at that time, and I must have been on a recess, seeing as how we were in court so long on that particular day.

Mr. ANDERSON. And were those draft letters laying before you on the desk when you were talking with Bill Borders?

Judge HASTINGS. If they were not on my desk, I don't have any independent memory of them being there, they would have been either on the bench or on my desk.

Mr. ANDERSON. And when you said, "The only thing I was concerned with was did you hear—did you hear from him after we talked," what were you asking Bill Borders when you asked that?

Judge HASTINGS. The only thing—Borders seemed at that time to know a great deal more about Hemphill's financial condition. I've learned since a great deal more that I did not know, and he was constantly communicating with him in that regard and that's all that I thought that he was talking about.

You know, Bill has been described by people as cryptic, and I think that Bill Borders is cryptic in conversation and a lot of times you have conversation with him and you don't know everything it is that you're talking about. I knew what I was talking about. I was talking about these particular letters and that is all that he and I talked about, period, on that day and all that we talked about from time to time in trying to help Hemphill.

Mr. ANDERSON. When Bill Borders, cryptic or not, said, "See, I talked to him and he wrote some things down for me," what did you understand him to be talking about?

Judge HASTINGS. My understanding was that he was talking about his conversations with Hemphill regarding his financial condition and that's all.

Mr. ANDERSON. And when did you—your recollection, when did you think he and Hemphill had talked?

Judge HASTINGS. Insofar as the time period is concerned, it would be difficult for me, but I believe it would be sometime during either that September period or sometime after he and I talked or after I had gone to the Fontainebleau, that he would have seen or talked with Hemphill. That was my impression.

Mr. ANDERSON. And then, when Mr. Borders said, "I was supposed to go back and get some more things," what did you understand he was talking about?

Judge HASTINGS. I didn't think anything at all but about the financial conditions as it pertained to Hemphill.

Mr. ANDERSON. And when you said, "There's no great big problem, I'll communicate with him, I'll send the stuff off to Columbia in the morning," what did you mean by that?

Judge HASTINGS. These letters, House Managers Exhibit No. 154.

Mr. ANDERSON. To whom were you going to send them?

Judge HASTINGS. To Hemphill.

Mr. ANDERSON. And for what purpose were you going to send them to Hemphill?

Judge HASTINGS. Among other things, to make sure that he understood at that time what Bill Borders and I were going to be doing. I thought about it a long time. I had categorically rejected Hemphill's request before to assist him and I was prepared to categorically go against the grain of my feelings and fail to assist him in this particular effort, and I didn't send the letters, I chose to wait until such time as I would see Hemphill and Bill Borders here in Washington at the affair that was scheduled for Bill Borders. You know, that's what happened.

Mr. ANDERSON. Now, Judge, let me take you up to the following morning, October 6th. Can you tell, from the court record or diary before you, what you were doing on that day?

Judge HASTINGS. Sure. On that particular day, we began early in the morning and there was a change of plea, several of those, and there was sentencing and then the jury trial was scheduled to resume, and the jury trial went from 10:20 in the morning until 9:00 p.m., and we had an emergency hearing—I don't know whether that was the big bank case or not, but I believe it was the particularly large injunctive case in the shutting down of a bank that came across my desk, and there were other hearings. On that particular day, October 6th, the record clearly reflects that we were in proceedings in court 12 solid hours.

Mr. ANDERSON. Mr. Chairman, I would at this time move the admission of Respondent's Exhibit 103, which is an extract from one of the courtroom diaries.

The CHAIRMAN. Is there objection to Respondent's Exhibit 103?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 103 and was received in evidence.]

Mr. ANDERSON. Your Honor, I would like to show you three exhibits, each of which is already I believe in evidence, but they may help us in our next phase here. I show you what has been marked Respondent's No. 97, No. 95 and No. 96.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Now, the itinerary—which exhibit is that, Your Honor?

Judge HASTINGS. The itinerary is Respondent's Exhibit No. 97, which was also Defendant's Exhibit No. 18 in the case in Miami in 1983.

Mr. ANDERSON. And by that agenda, what were your travel plans for the balance of October?

Judge HASTINGS. I think we've gone through this, but my travel plans for the balance of October would have been from Miami to Albany, Georgia, Albany, Georgia to Washington, DC, Washington, DC to Orlando, and then to Louisville, Kentucky out of Fort Lauderdale, and from Louisville to Columbus—and there's a missing link in here, I was going to stop in Dayton, Ohio and see my college classmate for 2 days during that period of time, and then back to Orlando for a board of trustees meeting at Bethune-Cookman College.

Mr. ANDERSON. Did you in fact leave Miami and go to Tallahassee on October 7th?

Judge HASTINGS. I certainly did, rented a car from there——

Mr. ANDERSON. What was the purpose of that trip?

Judge HASTINGS. To go to Albany State College, where a professor that had taught me at Florida's A&M Law School, his name is Cornelius Grant, had invited me—and how he came to invite me is Jesse McCrary had spoken for him the year before and asked if he would invite me, and I was going to Albany State to speak there, and Respondent's Exhibit No. 96 is the program reflecting that.

Mr. ANDERSON. And there is in evidence—and it is back by the wall and I won't bother to bring it out—a telephone call from you to Mr. Borders on October 8th. Where were you when you made that call?

Judge HASTINGS. I was in Dean Grant's office and he has a secretary named Smiles and she had assisted me in learning how to get outside and long-distance. I was in the Dean's office, the Dean was standing close-by and his secretary as well. It was not as if I was in need of any great privacy, but they both were near.

Mr. ANDERSON. And that call was made, I take it, just to make the arrangements for coming into——

Judge HASTINGS. There were two reasons: One, again, Borders had indicated that he would pick me up and, in addition to that, to put on the table whether or not he could get me into the L'Enfant Plaza, where somehow or another—and I still don't remember how I knew or which conversation it was, but I knew that Hemphill was staying there and I wanted to stay in the same hotel.

Mr. ANDERSON. Well, had you tried to book a room yourself at the L'Enfant Plaza?

Judge HASTINGS. Yes, I did, but I had other reservations. I had reservations either at the Hilton or another hotel, but the L'Enfant Plaza was crowded and I couldn't get in.

Mr. ANDERSON. And then thereafter, Judge, did you fly up the following morning, as indicated, to——

Judge HASTINGS. Yes, I did. I flew from Tallahassee, Atlanta, on into Washington, DC at some point in time.

Mr. ANDERSON. And just to clean it up so that I can get them off your table, Your Honor, what is the third exhibit I put up there?

Judge HASTINGS. The third exhibit is Exhibit No. 95, and it was the request in May of 1981 of Dean Grant asking me to participate in the program, and following his request to participate is my letter of confirmation, indicating that I would, and that took place May 18, 1981.

Mr. ANDERSON. So, that speech had been scheduled for some time?

Judge HASTINGS. That speech had been scheduled since May for this particular period, which is when the gala was held for Borders as well.

Mr. ANDERSON. Judge, let me show you what has been marked Respondent's Exhibit No. 89 and ask if you would read it and see if you can determine what it is.

Judge HASTINGS. This is an excerpt from the transcript of the proceedings that were taking place on that particular day, that day being October 6th, I believe, or sometime during the tail-end of the case of *United States* v. *Dominic Santorelli*, and this excerpt is page 339 and page 340, and it concerns a conversation that was taking place between myself, Mr. Owens, the prosecutor, and Mr. Rosen, the attorney for Mr. Santorelli, concerning my travel arrangements.

Mr. ANDERSON. And that concerned how your travel arrangements fit within the completion of that trial?

Judge HASTINGS. Indeed. I was pointing out to them that I had a long-standing commitment to travel to Albany State College and I was pointing out to them that I would like to get there, and I believe that, in an effort to accommodate me, that's why we went on into the night, to try to get me out of there so that I could make the college appearance.

Mr. ANDERSON. Mr. Chairman, I would at this point move that Respondent's Exhibit No.—help me, Your Honor.

Judge HASTINGS. 89.

Mr. ANDERSON [continuing]. 89 be admitted in evidence.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 89 and was received in evidence.]

Mr. ANDERSON. All right, Judge, we come now to the morning of October 9, 1981. The day has been reconstructed, but let me take you through it briefly.

You caught your plane that morning to Washington and you arrived. What happened then?

Judge HASTINGS. When the plane arrived, William Borders picked me up and we left National Airport and went to the L'Enfant Plaza.

Mr. ANDERSON. And did you expect him to pick you up?

Judge HASTINGS. Yes, I did.

Mr. ANDERSON. Now, when you were at the L'Enfant Plaza—let me see if I can cut out some of this. You have heard the description of the day by the FBI and everyone. Is the description of the morning period of how you got from the airport to L'Enfant Plaza, to William Borders' office essentially correct?

Judge HASTINGS. Oh, no question.

Mr. ANDERSON. Do you recall—tell us what happened while you were in William Borders' office with William Borders, from the time you arrived.

Judge HASTINGS. You skipped from the L'Enfant Plaza to William Borders' office?

Mr. ANDERSON. Let's just skip right up to William Borders' office, tell us what happened while you were in that office.

Judge HASTINGS. Mr. Anderson, I take the prerogative of having this only occur at one time and there are some important steps to get in Bill Borders' office, and I apologize to you——

Mr. ANDERSON. No, let me go back, Your Honor.

Judge HASTINGS [continuing]. I don't want to leave out of here with anything left unattended.

Mr. ANDERSON. This is your case. Let's start out at the airport, then, and go through it.

Judge HASTINGS. I'll join at the L'Enfant Plaza.

Mr. ANDERSON. All right, what happened at the L'Enfant Plaza?

Judge HASTINGS. At the L'Enfant Plaza, when we checked into the facility, a lady named Barbara Cruel evidently had been spoken with by Bill Borders about the possibility of arranging for me to be there. She independently made the decision to place my room justaposed to Borders' suite for that particular evening, and inquired if that was satisfactory. Both of us agreed that it was.

En route to the room, Ms. Cruel came from around her desk and went with us and a bellhop named Jerry, as I recall, and they both were extremely nice and they walked us all the way up. I commented that all I had done was check in. Borders commented to me, "Don't worry about it," indicating that he would take care of the room.

En route there, I noticed that he had a tuxedo and I indicated that, one, I didn't feel well and I indicated that I wasn't going to wear a tuxedo, I don't like formal attire and I don't like formal affairs, and so I told Ms. Cruel to assist me, if she could, in getting the suit that I had worn in Albany. I sweat a lot when I speak and I wanted it cleaned and she said she could accomplish that. She took the suit and put it in a bag and Bill Borders and I mentioned that Hemphill was scheduled to be there, Ms. Cruel advised us that he had arrived.

She went inside the suite portion of the adjoining facilities and sat at sort of an antique-type desk and called Hemphill Pride, and Bill Borders and I spoke to him from there and he invited us to his room. We went to his room. His wife, his child were there and he was shaving at the time. I had indicated I wasn't feeling well and

the baby was drinking grapefruit juice and I asked Shirley could I share it, she had a bottle of it and I drank grapefruit juice and we had small talk and exchange of greetings.

Pride asked if I would go with him to Georgetown, shopping for children's clothing and I told him I didn't feel well and, if I were to do anything, I would go to a luggage store, since I had luggage that was in disrepair. Borders indicated to me there that he would take me to the luggage store, and from there we went back downstairs to my end of the suite and picked up the piece of luggage that I needed to have repaired and we left the L'Enfant Plaza.

Mr. ANDERSON. Judge, let me just fill in a little bit of detail, since we are at the L'Enfant Plaza. When you say that Borders said that he would take care of the room, what did you understand that to mean?

Judge HASTINGS. That he would pay for the room. But, Professor Anderson, I think that only folk who know me would bear out, when you speak a lot and when you visit a lot and folk pay for your room, a lot of times they ask you or even tell you that they will pay for "your incidentals." I have a habit, and that is because I want to keep a good reputation—I have a habit of paying my own incidentals even when I'm invited to bar functions and elaborate functions where it seems that everybody would want you to go ahead and charge your food and your phone calls and anything else you may get, I simply don't do that, and I didn't think it meant anything to me other than that he would take the room affair. And really, my thinking was then, and still is, that, because of his status, doubted, he had "comped" the room in some fashion. There were a considerable number of people that came to that gala that were staying in the L'Enfant Plaza, and I didn't know what all of the arrangements were. But it is not uncustomary at all for one who arranges for a lot of people to get into a hotel, to have the room "comp," and I really think that it was a "comp" room, but not as it pertained to my incidentals.

Mr. ANDERSON. Judge, also you mentioned about getting your suit to the valet, that you talked to Ms. Cruel. Did she take the suit or who took the suit?

Judge HASTINGS. Yes, she did, Ms. Cruel put it in whatever the plastic or bag is that the L'Enfant Plaza used and she took it with her for purposes of it being cleaned and return to me in time to be worn that evening.

Mr. ANDERSON. Judge, when you left the L'Enfant Plaza, what happened next?

Judge HASTINGS. When we left the L'Enfant Plaza, Bill Borders' car was still outside, he never did have it taken valeted around or any place, it was still outside. I thought I was going with him some place where I could have my luggage attended to.

We left and, without saying a word to me, he made a U-turn, when we got to the District of Columbia courthouse, and there was a parking space immediately in front of the courthouse, and I commented to him, I said, "See, I brought you luck." He pulls in, we both get out of the car, he said that he had a hearing en route there, he had begun discussing the fact that he had a hearing before Judge Scott, or a trial is what he said, and I told him, "Nobody is going to start a trial on a Friday afternoon."

We get inside of the facility, we ran into a fellow who is, I believe, now on the bench, but at that time was practicing law, his name is George Mitchell. He had attended school with me, he was in Vernon Jordan's class and Doug Wiler's class, they were a year ahead of me.

Borders went inside the courtroom facility and I stood there talking with George and another gentleman. Eventually, I said to them, "Excuse me, let me go and see if I can find Bill, because he'll get lost in here somewhere." When I went to the courtroom, he was looking over a desk as if looking at papers, and then he went through the back, which I assume—I still don't know—would be going toward like the judge's chambers. I then went back out the front side and George Mitchell was still outside. I stood talked and waited for Borders to come back. Borders eventually came, and we passed by another lawyer who is since deceased, name Jesse Dedman, and we talked about the fact that Jesse was getting old but still practicing law and making money.

We left there and, without saying a word, we went to the W&W Liquor Store. We got to the W&W Liquor Store, the fellow that owns it is a man named Al, that's all I know, owned it at that time, and Borders for some reason insisted that I meet this gentleman. He was going there to get alcohol and chaser and that was eventually put in the car.

We left the W&W Liquor Store, I still didn't know that I was going to his office, and we come to his office. We get to his office, when we walked in, Cindy, the secretary, handed him several messages. I went upstairs to the rest room facility. When I came downstairs, he was on the telephone. When he got off the telephone, he said to me, "I'm running out of time," and I said just show me the way to the luggage store. We walked out the backdoor and he pointed me—his office was on New Hampshire Avenue—he pointed me in the direction of what I now know as Georgetown. At that time, I didn't have any idea in terms of orientation in my head as to where I was. And there's a bit that offends me that comes up right about here and that is that I walked right past an FBI agent.

Mr. ANDERSON. And how did you know that or how do you know it now?

Judge HASTINGS. Because he had on a blazer and he had a pistol in his pocket, and there were a couple of black kids that were coming down the street and I started to even hail a District of Columbia police vehicle, because my initial reaction was—I wasn't thinking about any FBI—my initial reaction was that there was getting ready to be some kind of confrontation, the way this was building up. And then I thought it was not my affair and I hastily continued on in the direction of Georgetown.

But why I say it bothers me is, I can't believe that anybody that knows where Jimmy Cobb and Bill Borders and Dudley Williams' law office is can believe that a person leaves there on foot and is not seen. Now, I will talk about that some more, I am sure, but I was offended by that all the way through the proceedings, and I'm sure that it has been expressed before by me in front of the jury and elsewhere.

Mr. ANDERSON. Judge, what time, to just try and fix the sequence here, if you recall, what time, after your visit to the courthouse,

the hotel and the liquor store, what time did you get to Mr. Borders' office?

Judge HASTINGS. The airplane came in dead on time, 10:40. I don't remember the exact time that we were at Borders' office, but it was an hour and maybe just a little bit more time, it was not less than an hour, but all of what we did that you have heard me describe took place, I believe, within the general range of an hour.

Mr. ANDERSON. Now, after you left Mr. Borders' office, what did you do?

Judge HASTINGS. I walked on foot to Nicky Young's Dress Shop. But before I got to Nicky Young's Dress Shop, I stopped at a bookstore that was on that same street and I bought two books for my mom. I bought a Duke Ellington book and I bought Paul Robeson's book or a pictorial book regarding Paul Robeson. I then went to Brenda Russell's, which was called Nicky Young's, but a lady named Brenda Russell owns it.

Mr. ANDERSON. Is that the same Brenda Russell you had had, I think you testified, dinner with?

Judge HASTINGS. Brenda Russell's then husband was a man named Danny Russell, whom I had known for a considerable number of years. She at one time worked for the Rouse Company and the Rouse Company was developing downtown Fort Lauderdale or attempting to, and Danny Russell and I became fast friends when he visited Fort Lauderdale on their behalf.

Here again, I divert only to bring to the attention of the Senate committee that so many things can be accepted as true that simply are not from time to time, and in this particular instance, Professor Anderson, Nicky Young's Dress Shop was a quality dress shop in that area. Mr. Simmons, with no offense meant to me, said that I said that Brenda Russell was an employee of the shop. There is no way on earth I would have said that, for that to have been reflected in the FBI 302, because I was as proud as punch that she owned that particular dress shop, and I knew that then and I was very pleased about it.

I attempted to make two phone calls, one to Noel Smith and one to Joyce McCray from Brenda Russell's. I took a taxi, after she pointed out to me the luggage stores. She showed me one that was very expensive and another she said through an alcove, if I were to go through there, it was less expensive. At the less expensive one, I purchased a man bag, and from there I took a taxicab back to the L'Enfant Plaza Hotel.

Mr. ANDERSON. Judge, do you have any way of recalling what time you got back to the L'Enfant Plaza Hotel?

Judge HASTINGS. Other than whatever amount of time it takes to walk and peruse and buy a couple of books, talk with someone, go around her dress shop and buy a man bag, however much time that was. The only thing that I think would pinpoint the time is the fact that I purchased food, soup and a sandwich, and I believe that there's a reflection on the receipt—it may already be in evidence here—that shows what time I ordered the food. I know that that is the case.

Mr. ANDERSON. Well, there is, Judge, but to set that in context, when you got back to the hotel, did you go straight to your room?

Judge HASTINGS. Yes.

Mr. ANDERSON. And ordered lunch at that point?

Judge HASTINGS. Yes, I went by myself.

Mr. ANDERSON. I think just for the moment, without going back, I think that fixes us at just slightly before 1:00 o'clock.

Judge HASTINGS. Yes.

Mr. ANDERSON. Taking that, what happened next that you recall on that day?

Judge HASTINGS. I had the soup and sandwich and I began reading the newspaper and at some point Hemphill Pride called me—I did not call him—and I indicated to him that I was in my room—again, when I left home, I didn't feel good, I'm talking about when I left Fort Lauderdale, and I still was not feeling chipper, so to speak, and I informed him of that.

He came to my room, he ordered the same thing that I had ordered, and I ordered another bowl of soup. We went downstairs and we both had two drinks, and after that I went back to my room and he went back to his, and it was subsequent thereto that he called me again.

Mr. ANDERSON. Again, about how long do you think you were downstairs, if you can recall? I know this was a long time ago, Judge.

Judge HASTINGS. No more than what it would take two people to have two drinks. I have heard Mr. Pride testify about what we talked about. I can tell you what we talked about.

Mr. ANDERSON. Why don't you?

Judge HASTINGS. We talked about the restoration of his licenses, the experiences that he had in prison and his trying to repair himself back into the Columbia area, and that was among the first times that I insisted that he begin thinking in terms of practicing law somewhere other than in Columbia, South Carolina, and I offered to him my suggestions regarding it during that conversation. I did not have any conversation with him at all regarding these letters at that time, and my reason was that I wanted to confront he and Borders at the same time about that.

Now, then, however long that took, I can't imagine it taking a very, very long time to have two drinks. Lunch was over, as I recall, for people, because they were breaking down the lunch table and the steamtable and all of that.

Mr. ANDERSON. After that, Judge, you went back—you indicated you went back to your room. How long were you there before Mr. Pride called you?

Judge HASTINGS. I wasn't there very long at all, and he called me and informed me that an emergency had arisen and to come to his room. I took my time, sort of. I went about doing chores there in the room. I changed shoes, the shoes that I had on were hurting me and——

Mr. ANDERSON. Why did you take your time, Judge?

Judge HASTINGS. Because you would have to know Hemphill, and what I really thought was not so much about an emergency as I did that a number of other people had come and he was getting ready to surprise me with who was in the room at that given time, and that was my immediate reaction. And when I stepped off of the elevator, by the time I did get to the floor—you have to come down one elevator bank, walk through the lobby, go to another ele-

vator bank and then go up to whatever his floor was—by the time I did that, he had Elliott his son in his arms and there was a seat right to the elevator and he kind of reached and said, "Blood, sit down," and then he described to me the fact that Bill Borders had been arrested and that John Shorter had called and informed him of same, and somewhere during all of the repeating of that he continued to tell me that they were going to get someone named Ken Mundy to represent me, and I informed him that I didn't need Ken Mundy or any other lawyer, and at some point in time he suggested to me that, under those circumstances, it would be in my best interests—his exact words were, "I don't know what Bill Borders has done, I don't know what you have done, or if you and Bill Borders have done anything, but a man's better off on his own turf." Those were his exact words or words to that effect, the "turf" part being exact.

I kept querying him about the events. He told me Agent Murphy's name. He did not tell me the name of any other agent other than Agent Murphy, and he did not give me any telephone number, but I perceive that as irrelevant. When he told me that I was being sought to be queried by the FBI, then a lot of things were set in motion in my mind at that point in time.

Mr. ANDERSON. But, Judge, to the extent you can recreate them, share with the committee what was going on in your mind from the time that Hemphill Pride said Bill Borders had been arrested and it had something to do with your courtroom.

Judge HASTINGS. I don't know how many people in this hearing facility have had a pistol stuck in their face. I have. I don't know how many people in this facility have been in an automobile accident of serious magnitude. I have on two occasions. On the three things that I have just described, two accidents and someone sticking a pistol in my face to rob me, a whole set of circumstances about your life go across your mind in a flash.

Among the things in the awesome confusion, as I recall it, was all of the things that I could think about that were unusual about how Bill Borders had acted at different times. I can't say that any one of them sticks out, but I can remember the events of that day, the circuitous route just to get me somewhere to take my luggage, that certainly came across my mind, and at that point in time I felt very seriously that there was a storm cloud abrewing.

Mr. ANDERSON. Judge, you had this conversation with Hemphill, you have these thoughts in your mind, what happens next?

Judge HASTINGS. I went back to my room. Hemphill did not come with me, as he has indicated. He went back to his room with the baby. When I got inside my room, I called my mother and at some point I called Patricia Williams. Shortly thereafter, Hemphill knocked on the door and, without looking through the peephole or anything, I flung the door open, he came in. I had not particularly unpacked, so packing was not a difficult thing to do. The books, the newspaper and other papers that I had purchased for my mother, I managed to put them together, and Hemphill walked downstairs with me all the way to the taxicab.

En route there, he said that he would take me to the airport. I told him that I did not want him to take me to the airport, recalling that he was on parole and whatever was happening, the only

thing that I could perceive was that it was going to be a problem for me and it likely would be a problem for him, and I have seen these same kinds of things develop before and I insisted that he not take me.

He put one of my bags, I had two, he put one in the backseat of the car himself and said that he would see me, and I got in the taxi. The taxi went to pull off and a lady was pulling out at the same time and the taxicab almost struck her. When he stopped, I inquired of him at that point how far was it to the Baltimore Airport, and he told me—he didn't tell me how far, he indicated to me in money terms that it was a $50 cab ride. I said take me to Baltimore.

Mr. ANDERSON. Judge, let me, before we get you back in the cab, go back to your room. You indicated you made two calls after you came back from Hemphill.

Judge HASTINGS. You know, Professor Anderson, I don't want to buy into Agent Mazella's notion with reference to in every instance people get time things confused, but I was in a state of shock about Borders' arrest and the fact that there was some kind of indication that the arrest surrounded something having to do with my responsibilities as a judge could cause me to be confused. I don't beg out of that. I know that I talked to my mom and I know that I talked to Patricia.

Mr. ANDERSON. Judge, do you recall making any other calls from the room that day?

Judge HASTINGS. Yes, before then I had called my chambers and I spoke with Barbara Katzen, who was an intern, to become a law clerk at some point with me after that, after Jeffrey left. Barbara advised me that Barbara Whiting, who was the facilitator of the program that we've talked about for Bill Borders, had inquired of whether or not I would make a presentation for Borders. In an effort to make sure that Barbara would know that, Barbara Whiting, that is, Barbara Katzen had given me her telephone number, and the number that I called, I got nobody.

The only person that I knew that knew Barbara Whiting was Carolyn Lewis. I called Carolyn Lewis and Carolyn Lewis gave me another number for Barbara Whiting, which I eventually reached, and therefore those were other phone calls. But that's not in the sequence after Pride had told me about Borders' arrest, that's before Pride had told me about Borders' arrest.

Mr. ANDERSON. But those are also calls you remember having made from your room?

Judge HASTINGS. No question.

Mr. ANDERSON. Judge, let me come forward a bit and we will get you back in the cab in a minute. By the time your case came to trial, did you know what the thrust of the Government's concern was about your behavior on October 9th?

Judge HASTINGS. Sure, the Government was alleging that I was fleeing Washington, DC.

Mr. ANDERSON. And you knew what the thrust of your response was, did you, sir?

Judge HASTINGS. Yes.

Mr. ANDERSON. In discovery, had you been given a copy of your hotel bill?

Judge HASTINGS. I had done more than get a copy of my hotel bill in discovery. In an effort to do my own investigation, I came here to Washington, DC in an effort to get a copy of that telephone bill. The first time I visited the L'Enfant Plaza Hotel, I spoke with Barbara Cruel. She advised me that the telephone records were in, as she put it, "the basement." I went about my business, and I don't know how long it was, whether it was 3 days or 2 weeks, but I approached the L'Enfant Plaza again about those records, the bill, period, and I was told then that the telephone bills had been taken by the FBI and that they were unavailable to me.

Subsequent thereto, I receive a copy in the reciprocal discovery exchanges that took place from Reid Weingarten and Robert Richter which reflected the L'Enfant Plaza Hotel bill for the room that I occupied, it did not have any local call on it and it did not have any long-distance call on it, and I knew that before I went to trial.

Mr. ANDERSON. Judge, knowing that, were these calls particularly relevant to your defense?

Judge HASTINGS. They were not, in my judgment, relevant to my defense. They merely were describing the events of the day as meticulously as I could, as I have here now. There was nothing to be gained at all by me talking about calling Barbara Whiting or Carolyn Lewis or Barbara Katzen or my mama or Patricia Williams. The simple fact of the matter is that I left Washington, DC by way of Baltimore and I stated my reasons during the course of the trial the phone calls were not at issue. As a matter of fact, that's as silly to me as the phone calls to Hemphill Pride. The issue was not where I called, the issue was did I call, and the fact is that I did and the only reason that I said it here, Professor Anderson, is because that's what happened.

You know, you can do a lot of things to suggest that one does not have total memory of events, but I assure you that the phone calls that I've described are my best recollection of the events of that day, and they were not described to obtain any advantage. Before we got here, Reid Weingarten talked about them.

Mr. ANDERSON. Let me put you back in the taxicab.

Judge HASTINGS. Sure.

Mr. ANDERSON. Do you recall what time you got to the Baltimore Airport, Judge?

Judge HASTINGS. I don't recall the exact time that I got to the Baltimore Airport. I know why I went there. I went there with an effort to try to catch a flight that I thought would get me to Fort Lauderdale, and it was a flight that I thought would get me there quicker than would the flight that has been described that would have gotten me to Miami quicker.

I didn't have but one thing on my mind, getting home, and the only reason I had that on my mind was I didn't know what was getting ready to take place and I had every intention—now, we are back to the surveillance thing. I really expected to see the FBI at the National Airport or at the BWI or in Fort Lauderdale, and it was, to my way of thinking, a little bit unusual that I did not.

Professor Anderson and Senators, I was a pretty fair country lawyer and I know all of my rights about talking with authorities and I have advised people over and over again in that regard. I had simple options: Had I been approached by the FBI, I could have

spoken with them if I wanted to, or I could have chosen not to speak with them if I wanted to. I was not told that there was an arrest warrant for me and I had no reason to believe that there was. I was not fearful of that at all, but I was concerned, and I had reason to be, my instincts were absolutely correct, that something was amiss.

Mr. ANDERSON. Judge, tell us a bit about your mother and those concerns.

Judge HASTINGS. I've been around the media a long time. Bill Borders was arrested and I had been seen with him during the course of that day. There was no question, and Hemphill had said to me that it had something to do with something that allegedly took place in my court facility, and I knew that there was getting ready to be a lot of media play.

My mother is a very bold woman in the living room, but she would be a shrinking violet under the intense lamp that the media places people under in settings of that kind. It is their job, I understand that, but we had everything but the hovering helicopters at one point around that facility and I knew that that was going to be problematical, and when I spoke to her, either at the L'Enfant Plaza or at Baltimore, I could hear the banging on the doors and loud noises and I could sense her concern.

Mr. ANDERSON. How old is your mama, your mother?

Judge HASTINGS. She's 72 years old, and at that time she was obviously a younger person, but my mother has been disabled for a considerable period of time. She has absolutely no cartilage in her knees, both of them having been surgically worked on, both with laser and with the knife.

If I have to bear the brunt of being concerned about my mama, then I'm going to bear it. That was my primary concern over and above anything that took place at that time.

Mr. ANDERSON. You and she live together, is that correct, sir?

Judge HASTINGS. We have lived together since my grandfather died, my father having preceded my grandfather's death, and my mother has lived with me since almost 15 years now, or I have lived with her.

Mr. ANDERSON. And was there anyone else living with you at that time?

Judge HASTINGS. No.

Mr. ANDERSON. Now, Judge, you did eventually get back to Fort Lauderdale. It has been put in evidence that you had a conversation with Agent Simmons later that evening.

Judge HASTINGS. Yes.

Mr. ANDERSON. Could you describe to the committee, as you saw them unfold, the events that occurred from the time you got to Baltimore Airport, got on the plane, until the time you met Agent Simmons and his partner?

Judge HASTINGS. The plane was late leaving, the 5:05 was going through Atlanta. I thought, and even though I had in July apparently taken the flight that has been described here, I thought that the flights in the evening, other than a 10:00 p.m. flight that I had caught a lot in Washington, I thought all of them were going to go through Atlanta. I didn't know and I really thought that the flight from Baltimore was going to be a nonstop flight. It turns out that

that flight went through Atlanta. I don't mean to dump on Atlanta, but trying to get to Fort Lauderdale, I didn't want to go to Atlanta, because you can go to Atlanta and don't go nowhere quick, and that happens an awful lot and that was my concern about the National and the Baltimore business. I was trying not to have to take a one-stop or a two-stop flight which would further delay me in getting home.

It is patently obvious to me, at least, that I had no problem speaking with the FBI. I spoke with the FBI. I asked Mr. Simmons whether or not he had the facility to record mine and his conversation. I knew when he was going to talk to me that he was going to prepare an FBI 302 when he began his discussion, and I knew he was not going to be able to capture everything that we talked about, and that's why I wanted him to record the conversation. He knows that and he has so much as said so.

So, as matters go, I talked to him for as long as he wanted to talk to me. In addition to the fact, to dispel the notion that there were those in the background that may have been able to query me better, he stayed on the telephone at one point a rather lengthy time, and the portion of his conversation that I could overhear were directing him questions to ask me, which he ultimately asked.

Mr. ANDERSON. Did you answer them?

Judge HASTINGS. I answered them to the best of my ability, Professor Anderson. The subject about the order and surrounding that area, I counted them. Agent Simmons or Harrigan asked me 16 different times, 16 different ways about that particular order, and to the best ability I answered them as best I could 16 times.

Mr. ANDERSON. Judge, is all of the information in the 302 which has been placed in evidence as I think Respondent's Exhibit 42, is that a product of that first interview?

Judge HASTINGS. It's a synopsis, and a lot of that information is nothing more than what I said to Mr. Simmons, but I said a great deal more. I apologize to the Senators, House Managers and you, Mr. Anderson. I have heard you use the word "garrulous." I don't like that term. I like "verbose."

Mr. ANDERSON. I stand corrected, Your Honor.

Judge HASTINGS. Well, no. I talk a lot and my answers ramble and my answers rambled with Mr. Simmons that night, but my mind didn't ramble and I know what I said to him and I know that I said a great deal more than what was reduced to two pages and a quarter in a 3-hour or near 3-hour conversation.

Mr. ANDERSON. Might I approach the witness, Your Honor, with an exhibit?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Judge, we will return to this later, but it is a point of some concern, if I could direct your attention to page 2——

Judge HASTINGS. Yes, sir. You are referring now to Respondent's Exhibit No. 42?

Mr. ANDERSON. Yes, sir, it's in evidence. In that, on page 2, the agent reports the telephone numbers for Hemphill Pride and Essie Thompson.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Did you give those numbers to him that evening?

Judge HASTINGS. No, I did not. I gave Agent Simmons the telephone number for Hemphill Pride and Essie Thompson the day following the interview at Mrs. Williams' home and I'm sure that somewhere along the line he could reflect it. I did not know Hemphill's telephone number to be committed to memory for me, and I didn't know Ms. Thompson's telephone number from memory. I had to get those for him.

Mr. ANDERSON. And was that by telephone, or did he come out and visit with you again?

Judge HASTINGS. He and I spoke by telephone the following day and we spoke by telephone the day following that one. At some point in time, it was when I told him about this; at another point, I complained about the office.

Mr. ANDERSON. Well, did there come a time when you were less willing or interested in talking with the FBI about these matters?

Judge HASTINGS. Well, it was real clear to me that I was not a witness, that I was a target and——

Mr. ANDERSON. And when did that become real clear to you, Judge?

Judge HASTINGS. Well, it became real clear to me in my conversations with Mr. Simmons. He Mirandized me, and the minute he Mirandized me, we were out of that witness business, there's no question about that.

Mr. ANDERSON. Well, you indicated you did talk to him by telephone and give him some more information in a few days.

Judge HASTINGS. Sure, I indicated to him that I would cooperate with him and the level of cooperation that he exacted was for me to take a polygraph and I advised him that I was not going to take a polygraph and I did not take one.

Subsequent thereto, he called or I called him again when I got to my office. It was a holiday and I was scheduled to try a juvenile. I recused from that case and slowly others as well. But I learned then for the very first time that things had been taken from my office under the aegis of the subpoena *duces tecum* that I went through with Agent Simmons, and I fussed with him about it and complained and told him that I would bring it to the attention of the authorities and I would hope that he would do so, and I believe he did.

Mr. ANDERSON. Judge, one final point before we turn back a bit. There is a record that has been put into evidence indicating a call from your phone to Bill Borders' phone on October 12th, three days after the event.

Judge HASTINGS. Yes.

Mr. ANDERSON. Do you recall what that call was and what it was about?

Judge HASTINGS. No question.

Mr. ANDERSON. What was it, sir?

Judge HASTINGS. Folks' mamas have a way of transcending perceived difficulties that some might have. To shorten the story, my mom was concerned about Mrs. Borders and she asked me if I would call and to try and learn how Mrs. Borders was doing, and that's exactly what I did. I did not speak with Bill Borders, I spoke very briefly—and now her first name does come to mind, her first name is Alberta. I never called her Alberta, I called her Mrs. Bor-

ders the few times that I spoke with her, and on that particular day that was my concern, to share with her my mother's concern for her as a mother, unrelated to the events as they were unfolding.

Mr. ANDERSON. Judge, we've tried to talk a bit about your nonjudicial business for 1981 and set these developments in a little bit less isolated context. Let me now turn and talk with you a bit, if I could, about the judicial business that Alcee Hastings was involved in, in 1981.

Judge HASTINGS. All right.

Mr. ANDERSON. Could you briefly describe for the committee the nature of the business that was coming before you in 1981? You've heard Judge King. What was the job of a judge, apart from speaking and other things?

Judge HASTINGS. Well, first off, you have to know His Honor, the Chief Judge, has given an accurate portrayal in capsule form of easily one of the busiest courts in the United States of America since the year 1978, before I went on the bench and today. So, for the last 10 years or a decade, you would have to know—and I believe everybody here does know—that south Florida and the State of Florida have suffered what I refer to as mega-shocks. Very few places in this country have had to undergo the critical change within the societal fabric as has south Florida.

We've had immigration—you know, folk often talk in terms of Cuban immigrants, but there are 44 distinct nationalities that share the Spanish language that live in south Florida, many of them being immigrants of recent vintage, a lot in that decade—Haitian refugees, countless persons from the Caribbean have come to that area, and those things then cause crushes on the social services.

I don't mean to cast aspersions on the Federal Government, but it is an international problem and it is being treated as if it is a local problem from time to time, and therefore the necessary resources are not attendant to that area. I say all of that to say that a lot of litigation is generated as a result of that.

We also are the cruise capital of America and our admiralty courts are extraordinary. We suffer just like everybody else when the economy waxes and wanes and our bankruptcy proceedings are enhanced according to the economy.

I haven't mentioned drugs yet, and all I can tell you is if there is another area of the country that has had to bear the brunt of the kind of onslaught of drugs as has Miami, as a point of entry, then it would be that all of these other things would have to be attended.

Now, then, much of that comes to the United States District Court for the Southern District of Florida for resolutions, ranging all the way from swallowers of drugs at the airport, back across the board to diversity jurisdiction in major lawsuits, not to mention all of our responsibilities having to do with regulatory agencies. We've had three airlines teeter and totter, unions that have disputes. I had the case where I had a situation where the bank went out of business and it was the beginning stages of those kinds of things happening, not to mention the considerable number of civil rights

problems that arise because of ageism, sexism and racism. All of those things are attendant in the United States District Court.

Now, we say that pridefully. I share Judge King's pride in that regard, because the hardest working judges that I know are people that are Federal judges throughout this Nation. But I don't know any in this country that have had to work as hard for as long as have the judge of the Southern District of Florida, and I wear the banner, even with all of this negative weight, of being a proud member of that court, Professor Anderson.

Mr. ANDERSON. Judge Hastings, let me see if I can focus a bit. There is sometimes an impression in the evidence that the *Romano* case and the *Accardo* case may have been all that has happened. I really want to focus and try to put in context the daily job, as opposed to the overall importance of it.

Judge HASTINGS. Every day is a big day.

Mr. ANDERSON. But what about with the criminal volume of cases and the Speedy Trial Act—let me do this differently. Is it fair, Judge, to say that most criminal cases have a pretrial phase, a trial phase, and a post-trial phase?

Judge HASTINGS. No question, and in the Southern District of Florida the added problem is language barriers, our court reporters and translators burn out, I mean from the awesomeness of our language barriers. Judge King mentioned that 6-month trial. That really took over a 9-month period that I tried that case, and 3 months of it—I was sharing with the reporters here—3 months of it was in Spanish and we only had 1 Spanish speaker on the jury.

I mention that to say that we have multiple defendants. It is not uncustomary—Judge King tried one case with 35 defendants. I had another one with 28. Judge Zlock just got out of a case that lasted 13 months with the outlaw people, and there were a considerable number of them. So, it is not uncustomary at all for any one of us to be in a—when I was a State court judge and when I was a lawyer, if somebody had a trial that lasted a week, we came from all over the county to look at it, because we thought that was a long time. In the Southern District of Florida, at the Federal level, if we have a trial that lasts a week, we think that that is a vacation. Our cases are long and complex, and there's no question.

Mr. ANDERSON. Judge, the pressures of the Speedy Trial Act, what does that do to what you have to——

Judge HASTINGS. It causes us to have to focus on the criminal trials, sometimes to the exclusion of the civil trials, and this may be the only time I will get an opportunity to say something that maybe the Senators ought to look at, totally unrelated to what may happen to me.

Because of the Speedy Trial Act and civil cases not being able to be attended—and we do a pretty good job, we have been about 65 percent criminal, 35 percent jury trials in the Southern District of Florida, but because of that, the civil cases lag considerably and folk don't get a chance to get their business attended to.

If the linchpin of this country comes undone, it is going to come undone by virtue of that particular aspect of dealing with the court system or a portion of it, at least, in avoiding civil trials because the crush of the Speedy Trial Act requires us to attend to criminal matters.

Mr. ANDERSON. In terms of the impact, apart from civil matters, the impact of Speedy Trial, how does that affect your ability to handle post-trial motions, sentencings and the rest of that?

Judge HASTINGS. Well, I haven't—it affects it immensely, Professor Anderson. I think it is clear that we have an awful lot of work, but it impacts severely and the new sentencing reform provisions are likely to have that impact. I have not had that opportunity, because now that they are being implemented, I have recused from all of my cases to attend to this particular business. But when I talk with my colleagues, already we are beginning to take 1-hour pleas and have 3-day sentencings, we're beginning to do that.

Mr. ANDERSON. Judge, let me get back to 1981 and see if we can set up again the setting your chambers. Who are your law clerks?

Judge HASTINGS. In 1981?

Mr. ANDERSON. Yes, sir.

Judge HASTINGS. Alan Ehrlich was my senior law clerk, and Jeffrey Miller was my junior law clerk, and because of the ongoing conditions in the Southern District of Florida, I believe of the then 11 judges that we had, at least 8 of us had emergency law clerks, and I was one of that, and that's where Charlester Williams came from.

Mr. ANDERSON. Now, can you tell us a bit more, to the extent you recall it, about Jeff Miller, his credentials and how he came to be a clerk in your chambers?

Judge HASTINGS. Yes. Jeff Miller had worked with Judge Paine and he, like anyone else, made an application. I reviewed the application and interviewed him and I liked Jeffrey then and I have the good fortune of having genuinely—and I believe most judges do—liked my law clerks. I've never hired a person that I did not think was a person that I could get along with, and so Jeffrey was easily in that category.

The other thing, like Judge King, I tend not to hire all A students and Jeffrey was not an all-A student, but he had drive and he had energy and he had willingness to do hard work long hours, and therefore he was my kind of person and I've had other law clerks like him since that time.

Mr. ANDERSON. When you say Alan Ehrlich was the senior law clerk and Jeff was the junior, what do you mean by that?

Judge HASTINGS. I mean that Alan had been there longer than Jeffrey. As a matter of fact, Alan stayed with me either four-and-a-half or five years. Judge Keough and myself are two people that kept one law clerk a long time. You get good work, you may as well get good work, rather than go around fishing for something else to be done.

Mr. ANDERSON. Now, if you recall, when did Mr. Miller come to your chambers?

Judge HASTINGS. I believe it would have been in 1980, and it must have been in September, because eventually Judge Paine and I were talking about him coming back to work with Judge Paine, and I got Judge Paine to agree that Jeffrey could stay and attend the many matters that I needed him to attend to.

Mr. ANDERSON. Judge, let me move through—I don't know how we could reconstruct your entire caseload to see how the *Romano*

case fits within it, but you've mentioned a case called, I think it was *Jean* v. *Meissner*.

Judge HASTINGS. Yes.

Mr. ANDERSON. Can you briefly describe what that case was about?

Judge HASTINGS. Yes. That case had to do with work permits of Haitian refugees. The United States Immigration Department did not want to have them have work permits, and by failure to have work permits, they were not able to get certain benefits that are provided.

We had considerable hearings. One of their lawyers was Ira Kurtzban, another of their lawyers was a colleague of yours, as were several professors and lawyers who were doing pro bono work for the Haitian refugees. The case fell before me and, suffice it to say, they were rather extraordinary hearings, it was in an effort to determine whether or not a person who is a nonresident alien has constitutional privileges such that they should be asserted on their behalf and permitted to go forward.

I found that they could, at least to the extent that work permits could issue and relieve the social services of south Florida, and there were 22,000 Haitian refugees who were without work permits at that time. The Government claimed that they couldn't find them. This occurred during the same time that the hostages were being held in Iran, we rounded up all of the Iranians overnight, it appeared to me, and I got angry about it and suggested to them through my order that it would be feasible in my mind that they could put forth that same kind of effort and find these Haitian refugees and give them work permits. The Government found all of them but 7 in a period of 30 days.

Mr. ANDERSON. Judge, I want to keep that and the *Accardo* case in the background, but the focus of the events here in these hearings have been on the *Romano* case.

Mr. Chairman, I wonder if I could ask if the clerk would place House Exhibit No. 2, the *Romano* docket before Judge Hastings so we might be able to set some of that in context.

The CHAIRMAN. Counsel, we've gone for about an hour and 20 minutes again. I think this might be an appropriate time to take a short recess. How much—could you give us an estimate as to how much additional direct examination you would expect?

Mr. ANDERSON. Mr. Chairman, it is not moving as fast, but I think it is useful, what we are doing. I think I may take the bulk of the rest of the afternoon. It may pick up at some point, but I can't really represent to you the time.

The CHAIRMAN. We will take about a 10-minute recess. If counsel both for the Respondent and the House could stand by, we may wish to consult with you during that 10-minute recess.

Mr. ANDERSON. Thank you, Mr. Chairman.

[Short recess.]

The CHAIRMAN. The committee will be in order again.

Mr. Anderson, if you would continue with your examination of the witness.

Mr. ANDERSON. Thank you, Mr. Chairman.

Judge, has House Exhibit No. 2 been placed in front of you?

Judge HASTINGS. I have it in front of me.

Mr. ANDERSON. The docket in *Romano*?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. And you recognize that as a case which you ultimately assumed responsibility and handled?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Now, let me, if I could, Your Honor, direct your attention initially to I guess what is indexed as Document No. 87, in February 1981.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Can you tell the committee what that was and what that——

Judge HASTINGS. February 1st?

Mr. ANDERSON. I think it's February 17th on my copy. 87 is the document number?

Judge HASTINGS. You are going to have to help me, Professor Anderson, I'm not finding what you're talking about—1981, I see. OK. Yes, sir.

Mr. ANDERSON. To what does that refer? Do you recall it?

Judge HASTINGS. Docket No. 87 is a motion for permission to travel that was filed on behalf of Thomas and Frank Romano.

Mr. ANDERSON. And do you recall what permission they wanted there, Your Honor?

Judge HASTINGS. Yes.

Mr. ANDERSON. What was that?

Judge HASTINGS. They wanted to go to California and, among the reasons that they suggested was that they had business opportunities in California and they thought at some point, when their problems were finished, they were going to locate in California.

Mr. ANDERSON. And what was the disposition of that motion, if you recall, sir?

Judge HASTINGS. I granted it and permitted both Romano brothers to go to California.

Mr. ANDERSON. And from that point on, if you can tell the committee, during the case, where did you understand the Romanos to be?

Judge HASTINGS. From that point and until such time as well on into these proceedings, I thought that both the Romano brothers were in fact in California.

Mr. ANDERSON. Now, did they travel back to Florida for major events such as sentencings?

Judge HASTINGS. Any time, the Romanos were diligent people about attending proceedings with reference to them, both when Mr. Curran was representing them and when Mr. Sonnett was representing them, and I don't recall any time in court that they were not present pursuant to the court's requirements.

Mr. ANDERSON. Mr. Chairman, I wonder if I might ask if House Exhibit No. 4, the transcript of the May 11th thing, could be pulled up for Judge Hastings.

Now, Your Honor, let me ask you to review briefly at least the opening parts of House Exhibit No. 4.

Judge HASTINGS. Yes, sir. And for purposes of the Senators, this is the May 11th proceeding of *United States* v. *Frank and Thomas Romano* that was held in Fort Lauderdale, Florida.

All right, sir.

Mr. ANDERSON. Judge, do you, as we sit here today, have any specific recollection about whether Mr. Sonnett had communicated to you any intention to seek a continuance?

Judge HASTINGS. Neal Sonnett had not communicated anything to me at all with reference to a continuance, Professor Anderson. But in fairness to Neal Sonnett and these proceedings and anyone else, I don't have any memory of his having done so and I don't believe he did, and I have reasons for why I don't believe he did.

Mr. ANDERSON. Well, what are your reasons, Judge, if you don't have——

Judge HASTINGS. Very simply, Neal Sonnett is one of the best lawyers in America and if he was going to seek a continuance, I believe the very first thing that he would have done would be to reach out to the prosecutor to see if the prosecutor would agree to that continuance. Particularly in this case, Neal knew that Jim Deichert was residenced in Atlanta and I'm sure that he would not have had him travel all the way to Florida for a hearing if he thought he could get him to agree.

In addition, it would be his practice, I believe, as most good lawyers, to file a motion and not just call chambers from a courteous standpoint and say that I'm going to seek a continuance, but indeed if everything else had failed, it would be my belief that that is what he would have done. Now, I have no memory of his having done so and it is that reason that causes me to believe that Neal Sonnett did not, certainly did not speak to me nor did anyone in my chambers say to me that he was seeking a continuance.

Mr. ANDERSON. Judge, when you say that, if worst had come to worst and a lawyer were forced to give telephone notice to your chambers that they intended to come in and seek a continuance, what would have been your practice upon assuming the bench?

Judge HASTINGS. When we went on the bench, I would have addressed the continuance before I addressed anything, and in this particular proceeding—and I've reviewed this before you handed it to me in this particular proceeding—I simply did not do that. I announced the reason that we were there for, and it was my belief that that was the precise reason that the proceedings were ongoing until such time as Mr. Sonnett spoke and indicated that he was seeking a continuance.

Mr. ANDERSON. Now, Judge, there has been admitted in evidence the presentence report and everything. Do you have a recollection, had you prior to the morning of May 11th in fact received and reviewed the probation department's presentence report?

Judge HASTINGS. I'm pretty sure that I did. I was prepared to sentence the Romanos and I haven't sentenced a single person who has been before me in any proceeding where a presentence investigation report was rendered to me, that I did not review that presentence report.

Mr. ANDERSON. Judge, there has been some question raised or at least the need for explanation of how matters get scheduled in your court.

Judge HASTINGS. Yes.

Mr. ANDERSON. How would sentencing or a hearing on post-trial motion to sentence, what are the ways in which it might be placed on your calendar and scheduled?

Judge HASTINGS. You have to understand that in my office everything calendaring-wise revolved around Marilyn Carter, but it is not uncustomary at all for the scheduling of motions or sentencings or other matters that don't come up at calendar call, for the law clerks to speak with the deputy clerk and to advise her that we wanted time on the calendar or she wanted time on the calendar, and then Marilyn and he would arrange it. And then I would think once that was done, it would not be uncustomary of my office to call and courteously advise, before any written communication, that such a matter had been scheduled and——

Mr. ANDERSON. Why would they courteously want to advise counsel?

Judge HASTINGS. Keeping people abreast, so that if they have problems, they can call and say, "Hey, I can't get there at that time," or they can write and say, "I can't make it that time," so very occasionally, when we are trying to schedule something, we will try to accommodate attorneys and their litigants, as well as the office that we function in.

Mr. ANDERSON. Judge, in fact, Mr. Sonnett did appear before you that day and ask for a continuance, did he not?

Judge HASTINGS. He did.

Mr. ANDERSON. And knowing what you know about Neal Sonnett's practice, is it improbable that he would seek continuances in cases in which he was involved?

Judge HASTINGS. It is not improbable for any attorney to seek a continuance when they are as busy as Neal Sonnett is and likely wanted to do the necessary things to address matters that he thought should be being brought to the attention of the court.

Mr. ANDERSON. And you subsequently granted that?

Judge HASTINGS. I granted that continuance and, in addition to granting Neal's continuance, although he, as he indicated here in the proceedings before the Senators, Jim Deichert vigorously opposed Neal's request for a continuance. But after I indicated that I would grant it, it was Mr. Deichert who sought additional time and we accommodated him as well. He was in the military reserves and he needed additional time from us, and therefore that is why the hearing was put over for a longer period than maybe it would have, but for that fact.

Mr. ANDERSON. Judge, now let me draw you forward, if you will, to the date to which it was ultimately put over, July 8, 1981, if you can fix that in your mind for a moment.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Again, if you could explain to us a bit in chambers practice, you are now aware that, in June, *United States* v. *Martino* was decided, is that——

Judge HASTINGS. Yes.

Mr. ANDERSON. You do recall that?

Judge HASTINGS. Yes.

Mr. ANDERSON. And that various memoranda were filed addressing those issues?

Judge HASTINGS. That is correct.

Mr. ANDERSON. Now, in the practice of your chambers, when motions and memoranda in a pending case such as that were filed, who receives them and what do they do with them?

Judge HASTINGS. In my chambers, when matters of that kind come in, there's an odd box and an even box for the respective law clerks who attend odd or even cases as they come in. Those persons review them and the perfunctory motions they push up to me and I sign them and then they advise me by way of memoranda what other motions are ongoing, I then tell them exactly where we stand with reference to them and ask them to proceed to do those things that are necessary insofar as research is concerned.

Mr. ANDERSON. To the best of your recollection, Judge, when was the first time you heard about the *Martino* decision and its potential bearing upon the forfeiture aspects of the *Romano* case?

Judge HASTINGS. Going into the courtroom and Jeffrey tugging on me, again a very busy day and taking a few minutes to tell me that something was developing that would have an impact on the forfeiture that had been put forward.

Mr. ANDERSON. Judge, let me show you two exhibits, if I could, and ask you if you could identify them.

First, let me show you what has been marked Respondent's Exhibit 141A and what has been marked Respondent's Exhibit 36. Starting with 141A, what is that, Your Honor?

Judge HASTINGS. 141A is an excerpt from the calendar for the day of Wednesday, July 8th, and Respondent's Exhibit 36 is the full opinion of *United States of America* v. *Sam Martino.*

Mr. ANDERSON. Judge, using the calendar if you must refresh your recollection, could you give the committee an idea of what was scheduled to happen in your courtroom on July 8, 1981?

Judge HASTINGS. Another big matter had come on the calendar at that point in time, *United States* v. *Accardo.* This is a case in which Santos Trafficante was one of the defendants and a status conference was set for that particular case.

Mr. ANDERSON. What time, Your Honor?

Judge HASTINGS. It was set for 9:00 in the morning, and then the *Romano* sentencing was set, and it appears on here as 10:00 o'clock, and then there's another case, *Pomerantz,* I don't have any memory of events pertaining to *Pomerantz,* but a sentencing was set at the same time as the Romanos, and then two other sentencings, *United States* v. *Shaw and Monfree,* I have no recollection of that, and I do remember the next case because it, too, was a protracted case and that was the mitigation of the sentence in *United States of America* v. *Wilson,* that fellow's name was Robert Wilson, and that was a major case that I tried in advance of this particular matter—probably subsequent to this particular matter.

Mr. ANDERSON. Judge, as you use that to refresh your recollection, where in this 9:00 to after 10:30 period would you have had this conversation with Jeff Miller, where and when?

Judge HASTINGS. Somewhere on a recess between the time that I came out of the courtroom after the status conference and returning to go forward in the sentencing of the Romanos.

Mr. ANDERSON. Now, showing you the full opinion in *Martino*, did Mr. Miller have a copy of that for you at the time?

Judge HASTINGS. I don't remember whether he did, but I remember he showed me something. I also remember that he had a memorandum that was a handwritten draft memorandum, and he signaled me as best he could in that limited amount of time that something was going on in this case that I needed to be abreast of.

Mr. ANDERSON. And did you subsequently hear argument in the *Romano* case on that day?

Judge HASTINGS. I heard both from Mr. Sonnett and from Mr. Deichert and I had in my possession Jeffrey's handwritten draft memorandum.

Mr. ANDERSON. And have you had a chance to look at the transcript of those proceedings that have been put into evidence?

Judge HASTINGS. Yes, I did.

Mr. ANDERSON. Judge, when you said that you intended to stand by your May 4th forfeiture order, what was in your mind at that time?

Judge HASTINGS. That that would be the case, that I would be able to stand by it, and I've heard all the other things about the potential for reserving and everything, but I really did think, in spite of all of the machinations, that the Government would be able to forfeit the money and take it from the Romanos.

Mr. ANDERSON. And do you recall, after the hearing when you went off the bench, the conversations, if any, between yourself and Jeff Miller?

Judge HASTINGS. I don't have a distinct memory. I know that Jeffrey and I had to, over a period of time, begin talking about it. Whatever it is that Jeffrey says took place at that point in time, I have no way of denying that, but I'm sure at some point, whether it was right after I came off the bench or some other time, Jeffrey said to me that we were going to have to give them the money back, and my recollection is that I said to him, "Well, give them the money back."

Mr. ANDERSON. Judge, it was Mr. Miller's testimony and it was your transcript that you said that you would have an order prepared. Would that have been the kind of thing you would have asked Mr. Miller, to prepare a draft?

Judge HASTINGS. I would have and I believe then that would prompt a conversation between he and myself, and it was a pretty good signal coming that the law in the circuit was not going to favor taking of the money of the Romanos.

Mr. ANDERSON. Judge, it is a bit sensitive, but I suppose it's a lawyer's dream to have a judge on the stand and be able to examine him about the decision process, but let me ask you this: You had put your ego on the line in that hearing, saying you were going to stand by your decision, that you had read *Martino*, you had done all of this——

Judge HASTINGS. Sure.

Mr. ANDERSON [continuing]. What typically would have been your response if the clerk claimed to you sometime after that and said, "Judge, I think you just can't do it under the law"?

Judge HASTINGS. Typically, my response would be to find out more about the case and the whys of it all, and if the law in the circuit was such that precedent required me to follow that law, I would have no choice, stare decisis speaks for itself and I would have to follow it, whether I liked it or not.

Mr. ANDERSON. Mr. Chairman, if at this time I could move into evidence Respondent's Exhibit No. 36, which is the full text of the *Martino* decision, and Respondent's Exhibit No. 141A, which is an extract for the court diary for the day of July 8th.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 36 and 141A and were received in evidence.]

Mr. ANDERSON. Judge, you indicated that you, along with many other judges in the southern district, had a third emergency law clerk during 1981.

Judge HASTINGS. Yes, sir. I don't know the exact number, but I know several of us did.

Mr. ANDERSON. And who was your third law clerk?

Judge HASTINGS. Charlester Williams.

Mr. ANDERSON. Now, where did he come from, I mean how did you happen to hire him and select him and when did he join you?

Judge HASTINGS. I don't know all of the details, but here again, the ordinary process of making an application, me interviewing him and agreeing that he could come on-board. I believe Charlester came to me from Washington, DC.

Mr. ANDERSON. Do you have any recollection? You had testified earlier that Mr. Ehrlich and Jeff Miller were local boys. Do you have any recollection of how he happened to come to you from Washington?

Judge HASTINGS. He was moving to Florida and wanted to get a start in Florida. He called me, I believe, before he came down and I may have invited him to come down for an interview, but I don't remember all of the details.

Mr. ANDERSON. Do you have any recollection as to when he started in your chambers?

Judge HASTINGS. I don't remember the exact time, but I'm sure that we can find that out, but it would have been during this time period that he and Jeffrey, as I recall, were seat-mates in their workbench.

Mr. ANDERSON. Judge, describe, if you could a little bit—this was before the new courthouse was constructed?

Judge HASTINGS. Yes, sir, we were in the old post office building, which was the old Federal courthouse.

Mr. ANDERSON. There has been some evidence, but could you describe the layout of your clerk's offices or what kind of facilities did they have?

Judge HASTINGS. We had what we called the bowling alley, that was the narrowest courtroom. It had been Judge Aronowitz's courtroom previous to that and the chambers attendant thereto. You

walk in the door, you turn to the right, that's where the law clerks would be. In this particular year, both sets of law clerks would have been right immediately to the right, and Jeffrey and Charlester would have been in the first area, Alan kind of liked a lot of privacy and would have been further back in chambers at that time, and interns would have been scattered at either work area——

Mr. ANDERSON. Now——

Judge HASTINGS [continuing]. And stacks of book back in that area as well.

Mr. ANDERSON. And when the third law clerk came in, where was he in relation to where Mr. Miller was?

Judge HASTINGS. Charlester worked at the same long table that Jeffrey Miller worked, and so did Danny Simon and so did JoAnn Tyson, and I believe Barbara Katzen in that area. I don't think anybody was back there with Alan, other than on assignment when Alan talked to them.

Mr. ANDERSON. Now, in this period, do you have any knowledge whether Mr. Charlester Williams worked with Mr. Miller on the *Romano* case at all?

Judge HASTINGS. I believe Charlester was present at least on two occasions when Jeffrey may have said something to be regarding either *Martino* or *Peacock,* and I believe that Charlester used his research skills to assist Jeffrey in some manner, but it was not under my direction such that I was saying to him, "Charlester, help Jeffrey with this," I think they came to the agreement that they would help each other.

Mr. ANDERSON. Judge, there has been a draft of a *Romano* order that apparently was prepared in July introduced in evidence. Did you ever see that or had you ever seen it at any time that you recall?

Judge HASTINGS. I don't recall seeing it.

Mr. ANDERSON. Let me move into August, Judge. Do you have any specific recollection of what the judicial load was at that time?

Judge HASTINGS. August of 1981?

Mr. ANDERSON. Yes, sir.

Judge HASTINGS. Yes, there was a lot going on, as is always the case.

Mr. ANDERSON. In some courts, August is a little bit lighter.

Judge HASTINGS. No, that used to be and that is no longer true, even in small areas of America, the old August recess business in the court system just simply doesn't work any more, at least in the State of Florida, all of the courts are continuously busy 12 months out of the year.

Mr. ANDERSON. Again, if we wanted to reconstruct what was going on in your courtroom, would your court diary show the activity for that month?

Judge HASTINGS. It would be virtually—excuse me, I don't want to bother to say it is identical, but it would be slightly less or slightly more or the same, it wouldn't be a radical departure from the customary work in the Southern District of Florida.

Mr. ANDERSON. Judge Paine's testimony is in evidence and Mr. Miller has talked. Do you recall the discussions at this time with Judge Paine concerning Mr. Miller's departure?

Judge HASTINGS. I recall at least one conversation with Judge Paine and he agreed, although Jeffrey was to come to him in September, he agreed that Jeffrey could stay an additional period of time. If it was September 30th, he agreed that Jeffrey could stay an additional period of time.

What I think needs to be understood is that, at any time in the month of October, Jeff Miller could have left the office and it would have been an understanding that that was okay, but Judge Paine and I agreed that he could stay for a little while longer, to attend not only to the *Romano* matter, the *Romano* matter has been zeroed in on, but there were other matters that Jeffrey was working on as well.

Mr. ANDERSON. Do you recall of your own knowledge, speaking of other matters, what you did in what has been referred to as the Haitian case, *Jean* v. *Meissner*?

Judge HASTINGS. Yes, that was a big case and it brought with it a lot of controversy in terms of the work, and the lawyers—I remember Rusty, who represented the Department of Immigration, I can't think of his last name, he is one of the best lawyers I've ever seen, he was really a good lawyer, and Ira Kurtzban is also outstanding, as well as your colleagues—names just escape me at this point, but those people, they were pushing up paper, I mean it would rival the paper in these proceedings, the amount of paper that was coming into that office just on that case alone.

But also had this bank failure, something having to do with the bank, and that's also a very delicate and critical period when the people from the FDIC come in and take over a bank and we had to marshall all of that, and then there was the criminal calendar that was ongoing, trials and all of those things, we were busy, that's all.

Mr. ANDERSON. And I take it your clerks were busy, too?

Judge HASTINGS. Oh, no question.

Mr. ANDERSON. Now, your third clerk, your senior clerk, Alan Ehrlich, do you know where he was in August? Do you have any specific recollection?

Judge HASTINGS. No, I don't have any reason to believe that Alan was not around chambers. He took vacations that were regular, but I don't know of any vacation in August, I just don't know.

Mr. ANDERSON. Do you recall a discussion with Mr. Miller very shortly after this decision in *United States* v. *Peacock* was handed down, Your Honor?

Judge HASTINGS. I don't have memory of a specific date, but Jeffrey was keeping me abreast and had the full responsibility for the preparation of all matters pertaining to the forfeiture in the *Romano* case, and I'm certain that he mentioned to me at some point in time that the *Peacock* decision had reaffirmed the *Martino* decision, and my memory as I speak with you, Professor Anderson, is that at some point I think he used the term, "it's on all fours with our case," meaning the *Romano* case.

Mr. ANDERSON. And do you recall your response?

Judge HASTINGS. Here again, if that's the time that I told him to give the money back, I didn't know that there was anything else that we could do, and I indicated to him that I didn't like it. At some point, I don't know whether it was that conversation or another one, I knew that there was a Hollywood Sun Tattler reporter

that had been covering the *Romano* proceedings and had called repeatedly regarding it, and I told him, my words to him were, "Well, when we do that," meaning the media, "all hell is going to break loose," and at some point I encouraged that he put in the order that I was in disagreement with the flow in the circuit and thought that that should not be the law.

Mr. ANDERSON. Now, Judge, there has been—I suppose it has come as an issue, as to whether your clerks were making decisions like this at the time. Can you give us your perspective on what you were doing with your clerks, what your job was and how you executed your responsibility and use their assistance then, and I suppose now, too?

Judge HASTINGS. I surround myself with talented professionals and I respect them to the extent that I expect of them to fully perform their duties. When we sit down and we have our initial discussion regarding what their duties are going to be, I advise them how I like my office to run.

Now, I have said, for example, that I had not read the *Martino* decision, and I had not, and I said during those proceedings that I did not intend to read it and I have not. But at the same time relying on my clerks, some kind of fiction has been created here that I'm the only person that does that and I don't want that fiction to be perpetrated, because it's simply untrue.

Most judges, especially as busy as we are, don't have a choice but to utilize the resources of those persons whom we hire to attend to matters. I make all of the decisions, the buck stops with me. When law clerks hand me something, then and now, be assured that when an opinion is drafted and goes out of that office, it is with my imprimatur and with my understanding about what it is. Now, as to relying upon them, indeed, I rely upon them. As to whether or not they would be able to influence me, I think, in spite of what any of them may say, they will tell you, you don't pull anything over the old man's eyes.

Mr. ANDERSON. Judge, is most of your—I take it that Mr. Miller has been with you for some time by——

Judge HASTINGS. Nearly a year or a year plus some days.

Mr. ANDERSON. And do you have a fair assessment or did you have an opinion at that time about how qualified or professional he was?

Judge HASTINGS. Yes. Let me talk about Jeffrey and be brief. Jeffrey was one of my best law clerks and I have had some great ones and I don't recall ever hearing a Federal judge say that he had a dumb law clerk, I just don't recall that happening, and all of us have great respect for these fine young minds that work with us.

Mr. ANDERSON. And at the time, after you discussed *Peacock*, would you, through conversation, have satisfied yourself as to the basis for Mr. Miller's views as to whether you had to give the money back or not?

Judge HASTINGS. There was no doubt in my mind that that had to be the case and I'm sure that we had active discussions with reference to it and that's what we did.

Mr. ANDERSON. Now, let me again, in order to put it in context, show you what has been marked Respondent's Exhibit No. 93, Your Honor, and ask if you could identify that.

Judge HASTINGS. Yes, sir. Respondent's Exhibit No. 93 was also a Defense Exhibit No. 15 in the trial before Judge Gignoux and it's an itinerary from September 19, 1981, through September 30, 1981.

Mr. ANDERSON. And that's a little bit different than the format we have been using for some of your travels, Judge. In what circumstances would that have been prepared, if you recall?

Judge HASTINGS. It may have been prepared—all I know is that Betty prepared it and we might have prepared it for the trial, to demonstrate what my real travel was and what I really did do during that period of time. But the answer to you is I really don't have any independent recollection of why it was prepared, but this is my travel, I can remember events on that.

Mr. ANDERSON. You remember events on that?

Judge HASTINGS. Oh, yes.

Mr. ANDERSON. Now, Mr. Chairman, just to again set in context the Judge's schedule, I would move the admission of Respondent's Exhibit No. 93 at this time.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 93 and was received in evidence.]

Mr. ANDERSON. Judge, let me take you through that period a bit in the context of the *Romano* case specifically.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. There has been admitted into evidence a tape recording transcript of a meeting between Mr. Borders and Mr. Rico/Romano on Saturday, September 12th.

Judge HASTINGS. September 12th.

Mr. ANDERSON. Did you instruct Mr. Miller you wanted the *Romano* order out on Monday, September 14th?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Did you instruct him you wanted it out on Tuesday, September 15th?

Judge HASTINGS. No.

Mr. ANDERSON. Did you give him any instruction concerning that case on any day that week?

Judge HASTINGS. No, sir, I did not.

Mr. ANDERSON. And, Judge, you've heard, probably more often than you want to, a transcript or recording of a meeting between Mr. Borders and Rico/Romano on Saturday, September 19th, in which Mr. Borders said the order would be out within 10 days. Did you instruct Mr. Miller you wanted the order out on Monday, September 21st?

Judge HASTINGS. No, sir.

Mr. ANDERSON. Did you instruct him to do anything on that case on any day during that week?

Judge HASTINGS. No, sir, I did not.

Mr. ANDERSON. Monday, September 28th, did you instruct him you wanted it out that day?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Did you talk with him about it, to the best of your recollection, on any date during that week, through the beginning of October?

Judge HASTINGS. I didn't talk with him or, if I did, it only had to do with the developments as it pertained to *Martino* and *Peacock*, but I gave him no instructions about the preparation of the order.

Mr. ANDERSON. Now, Judge—I don't think it is still on your table, Judge, but we have put in evidence Respondent's Exhibit No. 97, your itinerary. Do you have that in front of you?

Judge HASTINGS. No, sir, I don't.

Mr. ANDERSON. Let me show you——

Judge HASTINGS. Is this a copy of it?

Mr. ANDERSON. Yes.

Judge HASTINGS. Yes, sir. This is October?

Mr. ANDERSON. October, yes. The evidence has been that you did instruct Mr. Miller to get the order out on October 5th. Would you again explain for the committee what was your thinking at that time?

Judge HASTINGS. There is only one thing that I was thinking and that was to have Jeffrey complete his work, not only on that particular matter but others as well, and this is the only thing that I brought to his attention, and I've explained that it may appear to be simple and only 3 pages in the *Martino* decision or something that was pointed out by Weingarten and others. The fact of the matter is I perceived the RICO statute to be complex then and now and the forfeiture aspect to have some difficult aspects to it.

Mr. Anderson, I have had an experience with another law clerk named Lisa Goldstein, who left and left work unattended, and not with any viciousness, but she went about her business and didn't complete the work and I had a hard time getting that done when she left the office and I didn't that and I've not had that since. I've not had a law clerk to stay around and then take something with them that would require their attention or would have required a great deal of my time that I was devoting to other matters, when in fact I had assigned it to the law clerk, and so it is only for that reason that I did in fact say to Jeffrey, do the order, and I did say to him do it today.

Mr. ANDERSON. Now, Judge, you say you had a law clerk that had a problem before. Who was that?

Judge HASTINGS. I identified Lisa Goldstein, and it wasn't a problem. I had a problem because she left the office and it was as civil case and it was as 3-month long trial and there were a lot of things that had to be addressed that I was counting on her to address, and so she left the office, this meaning she went about her family and legal responsibilities and it was a long time before I could really get Lisa to complete the work, and it was no—oh, we were the best of friends then and now, but it was difficult, and I didn't want that to happen again and I don't want that to happen again.

Mr. ANDERSON. Did Ms. Goldstein testify about those matters that you are talking about?

Judge HASTINGS. She did, she testified during the course of the trial and identified the specific area for all that we are listening to at that time.

Mr. ANDERSON. Judge, you've already gone through your courtroom diary for the days of October 5th and October 6th, and I believe you said you were in jury trial at that time. Was the *Romano* order the only order you signed on October 6th, if you recall?

Judge HASTINGS. No, it was not the only order that I signed. I signed an order in *Jean* v. *Meissner*, the Haitian refugee case, and I may have signed other orders. I have a habit of whatever comes across my desk, I try to familiarize myself with them and get them out of there most immediately.

Mr. ANDERSON. May I approach the witness, Mr. Chairman?

Senator LEAHY (presiding). You may.

Mr. ANDERSON. Thank you

Judge, I show you what has been marked Respondent's Exhibit 116 and ask if you can identify that.

Judge HASTINGS. Respondent's Exhibit No. 162 is the civil docket that's more prolix than most, in the matter of *Marie Lucie Jean* v. *Meissner*.

Mr. ANDERSON. And does the front page of that docket show the counsel?

Judge HASTINGS. Yes, it does.

Mr. ANDERSON. I don't want to go home unless you identify those of my colleagues who appeared for the record, sir.

Judge HASTINGS. All right. Ira Kurtzban, Vera Wise, Stephen Forrester, and the young man that I called Rusty a moment ago is Richard Marshall, and I remember that now, and Maurice Inman. But there were other lawyers that were involved as well.

Mr. ANDERSON. We will get them in somehow.

Judge HASTINGS. All right.

Mr. ANDERSON. Judge, and that docket would reflect the order that you issued and the dates you issued orders on in that case in 1981, would it not?

Judge HASTINGS. I believe so.

Mr. ANDERSON. Mr. Chairman, rather than burdening and going through a description of another case, I would just move that the docket be admitted in evidence to show the activity in still another complex case in 1981.

The CHAIRMAN. Is there objection?

Mr. BARON. Yes, there is, we fail to see the relevance of the document at all to any issue in this case.

The CHAIRMAN. Counsel, this is a fairly extensive exhibit. Is it possible to just stipulate here in open court that this is another extensive piece of litigation that was pending in Judge Hastings' court?

Mr. ANDERSON. I think we could do that, if we could have—what I would like to put in would be about 3 pages of the docket. Let me tell you what the relevances are. There was extensive and I believe subsequently published opinion enjoining the Immigration and Naturalization Service, issued also on October 6th, in an injunction matter. The evolution right in the crucial period we are talking about here does bear on the Judge's workload and, as the docket goes on, it also shows following Mr. Borders' arrest how he happened to—that case was removed from under his jurisdiction. Those are really the only pages, Mr. Chairman, so if we could agree that those pages are relevant, I would meet with staff for the managers to try and cut it down to that size.

The CHAIRMAN. Let us sustain the objection at this point, and if you would identify the 2 or 3 pages you think are crucial and try to

get with House counsel on those and then offer it again, we would be glad to consider it at that time, but other than——

Mr. ANDERSON. Could I ask the Chair, if you conditionally admit it subject to my agreeing, just so I don't wind up walking away from the podium and resting before I've addressed that issue.

The CHAIRMAN. As I say, I would like to have—before we conditionally admit it, I would like to know which pages we are conditionally admitting.

Mr. ANDERSON. Fine, Mr. Chairman, I will do that overnight.

The CHAIRMAN. It is not possible at this point.

Mr. ANDERSON. Judge, finally, before we leave the *Romano* case, I believe you indicated there was some civil litigation that generated interest in your work. Do you recall that?

Judge HASTINGS. Civil litigation——

Mr. ANDERSON. Civil litigation involving the Romanos.

Judge HASTINGS. Oh, yes. I had a case that was a civil case. There were two spinoff corporations that the Romanos had formed and one, for the court reporters, was K Ara, and the other one was Iota, and I had a lawsuit that involved that, and Judge King had another civil lawsuit involving some aspect of the Romanos' business.

Mr. ANDERSON. And do you recall——

Judge HASTINGS. This was a civil case.

Mr. ANDERSON. I understand. Let me show you what has been marked Respondent's Exhibit No. 116 and maybe—can you tell the committee what that is?

Judge HASTINGS. Yes.

Mr. ANDERSON. What is that?

Judge HASTINGS. This is the case of *Bartee Tiernan, Trustee in Bankruptcy of the Estate of Iota, Inc.* v. *Thomas and Frank Romano* and someone else named David Shapiro & Company, and it had to do with the Sea Inn of Hallandale, which was a restaurant that was the subject of forfeiture in the case that was pending before me. This lawsuit, I recall very vividly, was being handled on behalf of Floyd Pearson, Stewart Richmond, Grear & Wild by Gary Fox. It, too, was an exhibit that was admitted in my trial and it's Defendant's Exhibit No. 42.

Mr. ANDERSON. Judge, why would the counsel—was Mr. Fox or counsel for the parties there interested in your disposition of the *Romano* order?

Judge HASTINGS. Oh, yes.

Mr. ANDERSON. Why?

Judge HASTINGS. They were interested because it bore on the matter that was the subject matter of this particular lawsuit that they had filed or the bankruptcy proceedings. Not only were Miami lawyers, but there were—I know there was a law firm in Chicago that was involved, and I believe there was as law firm in another city that was involved in this particular matter before me, so they were calling a lot to the office to learn when or if the *Romano* order would issue.

Mr. ANDERSON. And let me just be sure I understand the effect——

Judge HASTINGS. The criminal matter.

Mr. ANDERSON. Right. But the effect of your order vacating some $846,000 in forfeiture had the effect of freeing up that much of the Romanos' assets?

Judge HASTINGS. That's correct.

Mr. ANDERSON. And I take it a trustee in bankruptcy who was suing the Romanos might have been interested in that decision.

Judge HASTINGS. Counting the money.

Mr. ANDERSON. Mr. Chairman, I would again move the admission of Respondent's Exhibit No. 116. It fortunately is a bit shorter of a docket, but it does involve Frank Romano.

The CHAIRMAN. Is there objection to this exhibit?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 116 and was received in evidence.]

Mr. ANDERSON. Judge, let me briefly make the transition. We've reviewed the non-judicial events of 1981, we've reviewed some of the judicial events of 1981 and tried to put them in context. Let me take you back now to October 9th, and let me take you to the point you had been interviewed or you had your conversation with Agent Simmons.

Moving forward, say, to the following Monday, when did you first learn about the manner in which the subpoena *duces tecum* had been executed in your chambers?

Judge HASTINGS. It would have been the Monday following the events of October 9th. When I got home, aside from checking on my mom and being assured that my uncle was with her, I made phone calls from Ms. Williams' house at some point to my law clerks and advised them to advise everybody else that I didn't want to have conversations with them, because I could detect at that point in time, I didn't want anybody saying that I was doing anything to cause one to say or not say something. So, none of them said to me anything at all about the fact that the FBI had gone into the office with a subpoena *duces tecum* to appear at the grand jury and taken materials from the office.

So, it was not until I was at the office that I was advised of that, and why it came to my attention was one of the interns indicated to me how offended she was on the manner in which they had come there and there were other things that——

Mr. BARON. I have an objection to the hearsay, if Judge Hastings is going to describe conversations he had with people in the office.

Mr. ANDERSON. Mr. Chairman, if I can respond, it goes to the Judge's state of mind, his behavior, which is a fact of consequence in this litigation. Arguably, although I don't intend to pursue it, we could challenge the motivation of the FBI and their conduct, but the purpose of this is just res gestae, let's set the story in context of what happens, and I'm only offering this as it bears upon how his state of mind and how he comported himself in these circumstances.

The CHAIRMAN. The objection is overruled.

Judge HASTINGS. I think I can sum it by saying that I was angry about it and I told Mr. Simmons that, the special agent with the FBI.

Mr. ANDERSON. Judge, at this stage of the proceedings, how were you being kept apace of what the charges were and what the nature of the investigation against you were?

Judge HASTINGS. From the newspaper.

Mr. ANDERSON. And what were you reading in the newspaper?

Judge HASTINGS. The exact details that we are here about today, the exact details, every item. As a matter of fact, I've said it humorously, but I do mean it and it is not humorous. I felt that the FBI either had a division at the Miami Herald or the Miami Herald had a division at the FBI.

Mr. ANDERSON. Has anything that has occurred over the past 8 years dissuaded you of that view?

Judge HASTINGS. Not at all. Not at all. The same thing happens. These kind of proceedings happen a lot, but I learned of almost every event, Professor Anderson, having to do with this thing, including my indictment, I learned that from the media.

Mr. ANDERSON. And how did the fact that this was unfolding in the newspapers bear upon your state of mind and how you felt about the way it was being handled?

Mr. BARON. Can I object to the relevance of this? I don't understand why this is an issue in this case.

The CHAIRMAN. Counsel, what is the relevance of this line of questioning?

Mr. ANDERSON. Well, the relevance is—it bears two relevances. The fact of the leaks, I take it leaks are not irrelevant to this case, and what is done about leaks is not irrelevant, because one of the articles bears upon that. The fact of the state of mind, the reasonableness of his behavior, the trust and forthcomingness with which he dealt with the FBI and the prosecutors in the resulting litigation bears upon what they had done to him first. I can be more forthcoming with some counsel than I am with others and it partly depends on "who shot Sam first."

But more importantly than that, a lot of events here are being isolated out of context and we would like the opportunity for the Respondent to present the events that occurred to him in a broader context, rather than isolated in terms of little telephone records and the rest. This is part of the story. The *res gestae*, as I suppose the lawyer would say it, this is what happened and it bears upon it.

The CHAIRMAN. The objection will be overruled. The witness can state his recollection of what happened and his state of mind about it.

Mr. ANDERSON. How do you feel about this, Judge, when it was happening?

Judge HASTINGS. Oh, I was offended and I went public with my offense, and I don't have to beat it around. The thing that really, really bothered me, in addition to the office, was the fact that a grand jury was running and I was reading in the newspaper what was happening at the grand jury. Now, that happens in other situations, I'm not naive, but I just thought it was severely offensive and I so expressed that. I expressed it ultimately to Mr. McDowell and the Public Integrity Section, and I expressed it to any and all attorneys who were involved with me and I also said so when the media would inquire of me as to my state of mind, if you will, and I

so much as said that I was angry. It resulted in an internal investigation that I don't know the results of as we speak.

Mr. ANDERSON. Judge, let me show you what has been marked Respondent's Exhibit 112, in that context.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Can you identify that document?

Judge HASTINGS. I sure can. This was a document that was read by me to the Public Integrity Section when I visited here for a conference with them in advance of the proceedings going forward to the state of trial. Also Respondent's Exhibit No. 112 was Defendant's Exhibit No. 32 in the original trial in 1983.

Mr. ANDERSON. Judge, I won't go through that, but did that express your understanding of the events as they had occurred at that time and your views on them?

Judge HASTINGS. It certainly did.

Mr. ANDERSON. Where did that meeting take place?

Judge HASTINGS. It took place here in a building that houses the Public Integrity Section and did house them, excuse me. In the particular year, I believe this would have been 1981.

Mr. ANDERSON. And was that meeting called at your request?

Judge HASTINGS. There is a conference opportunity for targets—I want to say yes, but I just don't remember whether I asked them or they told me that there would be that opportunity, but I think when they identified me in letter kind as a target is when I said I wanted to come to that conference. And how I learned about the conference, I hadn't practiced law in quite a while, but how I learned about that was reading an article that appeared in Trial Magazine that was written by Stanley Prizer and Barbara Fleischer from West Virginia, and so I thought that I would ask them about the conference, and they agreed.

Mr. ANDERSON. And after that meeting, what did you do with this statement?

Judge HASTINGS. I went outside and had a press conference and issued it to the press and released it and, for the first time, I felt that perhaps the Public Integrity Section was getting a bitter dose of the way they had been doing me.

Mr. ANDERSON. Mr. Chairman, I would move the admission of Respondent's Exhibit 112 for identification.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 112 and was received in evidence.]

Mr. ANDERSON. Did there come a time when you, in fact, were indicted?

Judge HASTINGS. Yes, it was a New Years gift, December 29, 1981 I learned about it from television, my mama had seen it. I had gone to see the movie, "Absence Without Malice," and got out of the movie, called home, mom told me that I had been indicted and she had heard it on the news, which I also find offensive. I'm a United States District Court judge and I don't understand why somebody could not have called me and said, "Judge, these papers are getting read to be handed up and you need to be apprised". It was indecent.

Mr. ANDERSON. Nonetheless, it was done, Judge, and let's move into the pretrial phase of the case of *United States* v. *Alcee L. Hastings.*

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Now, that indictment, as I recall, was filed on—it is in evidence—December 29, 1981.

Judge HASTINGS. Yes.

Mr. ANDERSON. Let me start with the period January 1982 to March 2nd. Can you fix that in your mind, 1982?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. At that time, Your Honor, who were your primary defense counsel?

Judge HASTINGS. At that time, Andrew Mavrides, Joel Hirschhorn, and William Waterman.

Mr. ANDERSON. And were there other lawyers involved in your defense?

Judge HASTINGS. Yes, sir. At that time, you were handling the constitutional issues, and we had a meeting. I don't know whether you attended that meeting, Professor Anderson, but we had had a meeting that I call the committee meeting, and I was—in any event, there were several lawyers that were there, one who represents Steve Clark, William Cagney, Joel Hirschhorn was there, Jesse McCrary was there, Delano Stewart was at that meeting, Patricia Williams was at that meeting, Andrew Mavrides was there, Linda Hurtz, who had just left the United States Attorneys office, Linda Carroll, Marsha Lyons, and two or three other lawyers.

What I had in mind at that time—I don't think Jay Hogan attended that meeting, but Jay had agreed that he would handle the Title III wiretap motions, and what I was trying to accomplish and did accomplish was to get from those lawyers motions in their specialty areas that we could ultimately carry to the court.

From that meeting, Joel Hirschhorn and Andrew Mavrides emerged as sort of the coordinators of efforts that were to be ongoing, and those were some of the lawyers that were involved with me at that time.

Mr. ANDERSON. Now, who was the judge who ultimately came to preside in that case?

Judge HASTINGS. Judge Edward Thaxter Gignoux from Maine.

Mr. ANDERSON. Now, why was the judge from Maine selected, if you know?

Judge HASTINGS. The Chief Justice of the United States Supreme Court, then Chief Justice Warren Burger, selected Judge Gignoux, and the statutory provision seems to permit same, there was no random selection, he chose the judge and I believe that that was the power and the prerogative of the Chief Justice.

Mr. ANDERSON. Well, did that result because of all of your colleagues refusing to——

Judge HASTINGS. Oh, yes.

Mr. ANDERSON [continuing]. Feeling disqualified?

Judge HASTINGS. Everybody on the Southern District of Florida recused. There was an interesting thing that took place. I had taught at Nova University a course called "The Judicial Process," and in that course I had learned a little bit about impeachment and I began talking, even before I talked with you, Professor An-

derson, about the fact that I thought that it was inappropriate and likely could create a chilling effect for the Executive Branch of Government to use the criminal sanction powers that they have against a Federal judge before bringing he or she through the process of impeachment.

I mentioned that to suggest to you that I understood a little of the dynamic and/or the dynamics, and I had to teach my then Chief Judge, C. Clyde Atkins, how this matter was to take place with reference to me being arraigned, I had to teach that it was his responsibility to learn from the Chief Judge of the Eleventh Circuit what the Chief Justice of the United States District Court should do.

I tease about it, people at Palermo and I laugh about it a lot. I was indicted and having to teach people how I could get arraigned and I have always been fascinated by that, but then I had the advantage, unfortunately, of having read too little about impeachment.

Mr. ANDERSON. Judge, after Judge Gignoux took over, did he establish a calendar for when pretrial motions of various kinds would be filed and heard?

Judge HASTINGS. Yes, sir. Every judge does in any proceeding.

Mr. ANDERSON. And in your case, was there a substantial number of pretrial motions filed?

Judge HASTINGS. There were a substantial number of pretrial motions filed, indeed there were.

Mr. ANDERSON. Was one of those motions the motion that raised the question of whether a sitting judge could be prosecuted prior to impeachment and trial in the Senate?

Judge HASTINGS. A la you, Mr. Anderson, there was such a motion.

Mr. ANDERSON. And do you recall when those motions were heard?

Judge HASTINGS. I don't recall the specific date, but I know that several of them were heard virtually the same day, and I have a distinct memory, I have more of a memory of Professor Blakey being there that day than I do anybody, but I do remember that you were there, I remember that Mr. Hirschhorn was there, and that Andrew Mavrides was there, and that William Waterman was there.

Mr. ANDERSON. Now, let me ask you, at that point in time, taking Mr. Mavrides and Mr. Hirschhorn as your coordinators or what have you, how were the relationships between those two lawyers getting along?

Judge HASTINGS. At that time and even during that proceeding, I think that there was sort of a blowup between Andrew and Joel. Andrew had filed a motion for severance and Joel was not aware of it having been filed and thought that he should have full responsibility, as lead counsel, and sort of chewed Andrew out even in those proceedings.

The other thing is that Joel Hirschhorn was about the business of trying to coordinate matters to get to trial.

Mr. ANDERSON. Well, what happened with the motion to dismiss and quash, based on constitutional grounds, if you recall?

Judge HASTINGS. Ultimately, it was denied and an interlocutory appeal was taken to the Eleventh Circuit Court of Appeals, and that particular motion allowed that a stay of the proceedings came into existence, and I forget the exact period of time, but the stay lasted until such time as the disposition of the matter in the Eleventh Circuit Court of Appeals.

Mr. ANDERSON. Do you recall if Mr. Hirschhorn agreed with the decision to take that appeal?

Judge HASTINGS. No.

Mr. ANDERSON. What were his reasons recommending against it?

Judge HASTINGS. Well, Joel is a trial lawyer and Joel felt that we were going to be victorious and the quickest way to dispose of this matter was to be about the business of getting on with the trial, and his preparation was directed towards that effort and, I might add, outstanding preparation in the limited period of time that he was involved in the case.

Mr. ANDERSON. And do you recall at what point in time we took our appeal?

Judge HASTINGS. You would have to show me the dockets and everything, but it was early on in the proceedings and it was in advance of trial.

Mr. ANDERSON. If I can figure out what the number is, that the docket of that case be put in front of you, because I think it is fairly important. Let me take a pause there.

Could I ask the clerk, I know it is a House exhibit that was put into evidence, the docket of *United States* v. *Alcee L. Hastings*, and I'm not quite sure of the number myself.

Mr. MCGANNON. I'm not so sure that it has been placed in evidence.

Mr. ANDERSON. Well, then we will have to see that it is tomorrow.

Judge, let me take you generally through it, then, and we can lock down these dates tomorrow. An appeal was taken, is that correct?

Judge HASTINGS. That is correct.

Mr. ANDERSON. And at the time that appeal was taken, what happened with you and Mr. Hirschhorn's relationship?

Judge HASTINGS. Well, I don't think it was because of the appeal, but around that same time Mr. Hirschhorn and myself severed our relationship.

Mr. ANDERSON. And after that relationship was severed, who remained as your principal or coordinating counsel for general purposes?

Judge HASTINGS. Andrew Mavrides.

Mr. ANDERSON. And was Patricia Williams involved at this stage?

Judge HASTINGS. She was becoming more and more involved as the matter progressed, but you have to understand that Patricia was involved from day one.

Mr. ANDERSON. Now, who was Andrew Mavrides?

Judge HASTINGS. Andrew Mavrides, who has since deceased, was an attorney in Fort Lauderdale, easily described as an activist, he was a politician, he was a humanitarian, a civil rights and civil libertarian, champion for the downtrodden, ultimately was elected to

the school board and did outstanding work with reference to education on behalf of children, as Chairman of the Broward County School Board, and was a good friend of mine and a professional ally that I had an immense amount of respect for, not only his ability but his decency as a human being.

Mr. ANDERSON. About how old was he, Judge, at that time?

Judge HASTINGS. Roughly my age.

Mr. ANDERSON. About how old were you at that time?

Judge HASTINGS. I will only date back 8 years.

Mr. ANDERSON. So, you go back 8 years?

Judge HASTINGS. Yes. I'm 52 now, so if we go back 8 years, Andrew would have been in his forties, as myself.

Mr. ANDERSON. And was he an experienced trial lawyer at that time?

Judge HASTINGS. Andrew had had significant litigation and he was involved at that time in the jail case, the detention facilities were overcrowded and he was the lead lawyer in that particular matter and it was consuming a lot of his time, as I recall. Yes, he had trial experience.

Mr. ANDERSON. Judge, I understand that House Exhibit No. 148 has been placed in front of you.

Judge HASTINGS. I have it.

Mr. ANDERSON. And what is that, again?

Judge HASTINGS. This is the docket sheet of *United States of America* v. *Hastings and William Borders.*

Mr. ANDERSON. I wonder if you, examining that, could you determine when the motion to dismiss was denied, when the notice of appeal was filed, and whether an order staying the proceedings was entered and when Mr. Hirschhorn withdrew, just to fix those dates for the committee.

Judge HASTINGS. I've not reviewed this, Professor Anderson, in quite some time and I can't just pull it up like that. I'm sure——

Mr. ANDERSON. Mr. Chairman, can I lead the witness a bit on this point? The document is there, I just want to fix some dates so we can go on.

Judge HASTINGS. The motion to dismiss, I see now—no, this isn't the one, because this is 1983.

The CHAIRMAN. You may, counsel.

Mr. ANDERSON. Judge Hastings, if you go back earlier in it, does the docket reflect that the motion to dismiss on constitutional grounds was filed on or about February 1, 1982?

Judge HASTINGS. All right, just hold on.

Mr. ANDERSON. We'll get there.

Judge HASTINGS. Yes, sir, it is Document No. 56.

Mr. ANDERSON. And was that motion denied on or about February 17th, as the docket reflects? There was an awful lot of motions filed that day.

Judge HASTINGS. I was just about to say, there was a lot of motions. I don't even have to look at that. Judge Gignoux denied them all.

Mr. ANDERSON. But the date becomes important, Your Honor.

Judge HASTINGS. Well, for the purposes of the date, then, it must have been the 17th. But whenever it was we filed something, we filed 41 motions and we lost 43. [Laughter.]

Mr. ANDERSON. Judge, does the docket reflect that a notice of appeal was filed on, I think it was February 26th or——

The CHAIRMAN. Counsel, let me just advise, we are, of course, willing to hear whatever testimony you think has to be elicited. This document is in evidence, I believe, the exhibit is and counsel can certainly allude to it in his argument to the committee or to the Senate. If he thinks there are facts in the document that are particularly pertinent, if you wish to take the witness through the document and have him single these things out, you can do that, we will not interfere, but I do think——

Mr. ANDERSON. Mr. Chairman, let me suggest—maybe I will take that back up in the morning—the reason why these dates become important is because there has been a suggestion of delay in discovery and that and I think it needs to be clear when this matter was up in the Court of Appeals and when it was down. Let me pass on from that and we can come back——

Judge HASTINGS. I just answer the last question, February 26th was the date of the notice of appeal, also the motion to stay was filed at that time.

Mr. ANDERSON. Judge, we can return to that exhibit, but let me take you through a period from March to early November. Do you recall the proceedings in the trial court were in fact stayed while this case was on appeal——

Judge HASTINGS. That is correct.

Mr. ANDERSON [continuing]. And I was doing my job?

Judge HASTINGS. That is correct. The only thing that was done during the stay was Judge Gignoux permitted me to go to Abaco to go fishing.

Mr. ANDERSON. And during that period, there has been testimony that at some point in this period you went to Columbia, South Carolina and had a chat with Hemphill Pride.

Judge HASTINGS. That is correct.

Mr. ANDERSON. Would you share with the committee your recollection of how that meeting came to pass and what occurred at it?

Judge HASTINGS. Mr. Hirschhorn and I knew that Pride was a witness that was going to need to be interviewed, Pride had appeared before a grand jury, and I was genuinely concerned as to what he might be saying or had said before the grand jury and I wanted to know. I determined that I would interview him myself. Joel was very reluctant, as was Andrew Mavrides and Patricia with me to take that kind of lead responsibility, but I knew Hemphill and I wanted to talk to him and I wanted him to tell me what it was that he had said.

Joel knew an attorney named Jack Swerling, S-w-e-r-l-i-n-g, and arranged for me to meet with Hemphill in Jack Swerling's office. I had been privy to conversations with folks who were laying pretty heavy trips on Hemphill, such that people believed or were saying that he was as cooperating witness with the United States Government in this matter. I had reason to feel that that might be true.

Mr. ANDERSON. Why did you think that, Judge?

Judge HASTINGS. Because of his actions that he had undertaken and, in addition to that, a mutual friend of mine and his, whose name is William Larkins, I had asked William to visit with Hemphill earlier on and to check him out, sort of like an investigator,

and Bill so much as said to me that he thought that Hemphill was a cooperating witness.

Mr. BARON. Objection, that's hearsay.

Mr. ANDERSON. It goes to the Judge's state of mind in approaching this conversation.

The CHAIRMAN. The objection is overruled. The Judge can recount what occurred.

Judge HASTINGS. When I got to South Carolina, on a Sunday, it was Superbowl Sunday, I had dinner with Carolyn McIver and her mother and stepfather. I spoke with Hemphill by telephone. He invited me to dinner with him and his mother and I refused.

Mr. ANDERSON. Why?

Judge HASTINGS. I refused for the reason that I didn't want to create any appearance of impropriety or have anyone suggest that I was obstructing justice by acting in the capacity of my own attorney, which I incidentally overrode everybody else because I thought I had that right.

In any event, I went to rather elaborate undertakings to avoid being in his presence until such time as we were in Swerling's office. When we were in Swerling's office, in Swerling's presence for most of mine and his conversation, I asked him specifically what had he said before the grand jury and he told me what he had said before the grand jury.

We were not together a very long time and I indicated at that time, I left out of the office, as did he, that we had been given the conference room and I asked Swerling to be kind enough to call for me a taxi so that I could go to the airport. Hemphill indicated to me that he would take me to the airport.

Mr. ANDERSON. What was your response?

Judge HASTINGS. I told him I did not want him to take me to the airport.

Mr. ANDERSON. Why?

Judge HASTINGS. And that was for the reason that I felt that he was wired and I felt that he was a cooperating witness. Now, then, at that point in time I went about still trying to get Swerling to get me a taxi and Hemphill insisted. I say, well, fine, you can take me to a taxi stand. We left outside and he said to me that he would take me to the airport.

I will tell you, Professor Anderson, I heard Hemphill come in here and said I had a discussion with him about these letters. No such conversation took place at that point in time. The only time that I may have said anything to Hemphill about it was at some other point in time, in discussing with him precisely what my understanding was with reference to my undertaking with Bill Borders.

Mr. ANDERSON. Judge, let me separate two things. I want to cover with you what that precise other time was, but I want to center it here. What happened when you got in the car with Hemphill Pride? Did he take you to a taxi stand?

Judge HASTINGS. No, he said he would take me to the airport and I relented and said okay, fine.

Mr. ANDERSON. What happened then?

Judge HASTINGS. The very first thing he said to me, he turned and he said, "Blood," he says, "you aren't telling me what's going

on and Bill Borders isn't telling me what's going on and I want to know what is going on." I rolled my window down and I looked out the window and I told him, I used a curse word and told him I don't know what you're talking about.

There was a filling station—I knew South Carolina, I visited him frequently, and there was an area where there was as brand-new filling station and a shopping area and I began commenting about how fast things were growing there in Columbia and I refused to engage in any conversation with him. I thought——

Mr. ANDERSON. Why?

Judge HASTINGS. I thought that he was a cooperating witness and, again, my instincts were right on the money.

Mr. ANDERSON. You thought it at the time, but did you know it at the time?

Judge HASTINGS. No, I did not know it at the time and I didn't know it, truthfully did not know it until 5 weeks ago, Professor Anderson, when——

Mr. ANDERSON. How did you come to find it out then?

Judge HASTINGS. I came to find that out when I was going to a work session with you and Patricia Williams at the University of Miami and the other persons that were helping us, and you at that time had a copy of the transcript of taped telephone conversation that had transpired between Hemphill and myself, and that is the very first time that I knew that that occurred. The 3 to 5 hours that we had slotted to work, I told you that it upset me so much, I wasn't at the university but about 20 minutes, I simply could not work. I couldn't believe it and I guess over the years I had not wanted to believe that, but I can tell you this much, the old instincts were right on it.

Mr. ANDERSON. Judge, let's go forward to that telephone call. Do you recall when that—either having refreshed your recollection of that transcript or independently, do you recall that call and why you made it?

Judge HASTINGS. Yes. A lot of people were saying just what I told you, that Hemphill was a cooperating witness.

Mr. ANDERSON. Who were those people?

Judge HASTINGS. Mutual friends in the National Bar Association. Specifically, the one name that comes to mind from the record is Bill Borders' former law partner, James Cobb, and other persons who I just don't know because I don't have the—I only read it one time. It upset me an awful lot. But as matters go, I was telling him not to be concerned about what other people were saying, and I was saying to him that the most important thing for him to understand is that he had nothing to be concerned about, that the two people that were indicted and the only two people that were indicted had anything to be concerned about, as I perceived it, would have been William Borders and myself, and in a sense what I was trying to do was reassure him and still reaching out, for some strange reason, in a brotherly fashion to put the quietus on his concerns. He had spoken with George Allen, he who was a mutual friend of mine and his, and he was saying to me that people were saying things about him in that regard, and as it was, I wanted him to understand where I was coming from and I think I made that very clear.

In addition, to demonstrate once again that I thought that he was participating or could be or was fearful that he might be, I indicated at the very outset, I believe, that I wanted him to clearly understand that I was acting as my own lawyer so as how no one would perceive my conversation with him as obstruction of justice.

The CHAIRMAN. Counsel, I think we are just a few minutes, two or three minutes before 5:30, which we had scheduled to recess and the committee needs to do a rollcall vote here in open session, so at this time I think we will interrupt the testimony and you can continue with more testimony tomorrow morning at 9:00 o'clock.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. Before we go to this other matter that we need a rollcall vote on, let me just advise counsel for the House and for Respondent both that we need to at least put people on notice that it is possible, depending upon how testimony goes tomorrow, it is possible that we would have to have an evening session tomorrow evening and/or Thursday evening, depending upon how well we can move forward. I hope we do not have to. We have not made a decision to, but I felt that we should at least advise people that the committee may consider that possibility tomorrow, depending upon how well we are going.

I am advised that Senator Durenberger is on his way, and as soon as he arrives we will go forward with this matter, that we need to have a rollcall vote on.

Mr. Anderson?

Mr. ANDERSON. Mr. Chairman, in terms of—I understand the Chair and believe that we will be done with our work by Friday. In terms of considering the evening sessions, I would hope the committee would consider the length of time that the Judge is on the stand. If it is necessary to keep counsel and get multiple witnesses in, we can hang in tough, it will be long days.

The CHAIRMAN. We are trying to take the needs of the Judge into account, that is why we had a recess this morning and a recess this afternoon, and we will continue to try to do that, but I did want to put counsel on notice that it is possible we would have to go to an evening session. We have not made the decision to do so.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BRYANT. For our planning purposes, we would like to inquire of the Respondent how much time he expects to——

The CHAIRMAN. Is there any additional or new estimates you could give us as to the additional time you need in your direct examination?

Mr. ANDERSON. Mr. Chairman, I am reluctant, because the pacing is not there. I think it will move a bit more quickly, but I would think perhaps the bulk of the morning, but I don't think it would go beyond, say, 11:00 or 11:30, but I really don't want to—I want to let this one play as it plays.

The CHAIRMAN. All right.

Let me ask, do the House counsel at this point have any estimate as to the length of the cross-examination, or is that not possible to accomplish until we finish with the direct?

Mr. BRYANT. It is very difficult to estimate, Mr. Chairman. I'm not sure.

ROLL CALL VOTE RE: RESOLUTION TO ENFORCE SUBPOENA AGAINST WILLIAM A. BORDERS, JR.

The CHAIRMAN. OK.

I believe all the Senators are here. The issue before us is the resolution and report which our committee counsel has prepared, Senate legal counsel has prepared to bring a civil action to enforce subpoena of the Impeachment Trial Committee on the articles against Judge Alcee L. Hastings. This, of course, is in the matter of the testimony of William A. Borders, Jr.

I think all members of the committee have a copy of this resolution and the report that accompanies it. I would ask the Clerk of the committee to call the roll on this issue.

Mr. HARVEY. Mr. Leahy.

Senator LEAHY. Aye.

Mr. HARVEY. Mr. Pryor.

Senator PRYOR. Aye.

Mr. HARVEY. Mr. Bryan.

Senator BRYAN. Aye.

Mr. HARVEY. Mr. Kerrey.

Senator KERREY. Aye.

Mr. HARVEY. Mr. Lieberman.

Senator LIEBERMAN. Aye.

Mr. HARVEY. Mr. Durenberger.

Senator DURENBERGER. Aye.

Mr. HARVEY. Mr. Rudman.

Senator RUDMAN. Aye.

Mr. HARVEY. Mr. Bond.

Senator BOND. Aye.

Mr. HARVEY. Mr. Gorton.

Senator GORTON. Aye.

Mr. HARVEY. Mr. Burns.

Senator BURNS. Aye.

Mr. HARVEY. Mr. Vice Chairman.

The VICE CHAIRMAN. Aye.

Mr. HARVEY. Mr. Chairman.

The CHAIRMAN. Aye.

Mr. HARVEY. On this vote, there are 12 ayes and 0 noes.

The CHAIRMAN. That resolution will be reported to the full Senate.

We will stand in recess until 9:00 tomorrow morning.

[Whereupon, at 5:31 p.m., the committee adjourned, to reconvene on Wednesday, August 2, 1989, at 9:00 a.m.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

WEDNESDAY, AUGUST 2, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:16 a.m., in room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, and Burns.

House Managers Present: Representatives Bryant, Synar, Gekas, Fish, and Brooks.

Counsel Present: Terence J. Anderson, Patricia Graham Williams, Robert S. Catz, Lewis Myers, Jr., Sue Ann Hochberg, and Charles Francis, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, Assistant Special Counsel, House Impeachment Committee; Michael Davidson, Senate legal counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. The committee will come to order.

We will continue with the examination of Judge Hastings by his counsel.

Judge HASTINGS. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning, Judge.

Mr. ANDERSON. Good morning, Your Honor.

TESTIMONY OF JUDGE ALCEE L. HASTINGS

DIRECT EXAMINATION (CONTINUED)

Judge HASTINGS. Good morning, sir.

Mr. ANDERSON. Did you sleep well?

Judge HASTINGS. Haven't lost any sleep, Mr. Anderson.

Mr. ANDERSON. Your Honor, what I'd like to do this morning, as we went through yesterday, I omitted a few items, and I would like to simply take you through a few exhibits, if I might.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. I will show you what's been marked Respondent's Exhibit 108 for identification and ask if you can identify that briefly and tell the committee what it is.

Judge HASTINGS. This is a letter directed to me, dated October the 16th, 1980, I believe, from Hemphill Pride's mother to me.

Mr. ANDERSON. And that letter expresses some of her concerns about her son that she was sharing with you at that time?

Judge HASTINGS. Indeed it does.

Mr. ANDERSON. And was that admitted as an exhibit at your trial?

Judge HASTINGS. It was Defendant's Exhibit No. 26 at the original trial.

Mr. ANDERSON. Mr. Chairman, I would move the admission of Respondent's Exhibit 108.

The CHAIRMAN. Is there objection?

Mr. BARON. There is no objection, and we have the original here if you would like it.

Mr. ANDERSON. Fine.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 108 and was received in evidence.]

Mr. ANDERSON. Your Honor, I will show you what's been marked Respondent's Exhibits 118 and 119 and bear Defendant's 44 and 45. I'd ask if you could identify those.

Judge HASTINGS. At the trial, they were Defendant's Exhibits 44 and 45, as you've just stated. Respondent's Exhibit No. 118 is the report of the probation department with reference to Frank Romano, and it should be also Thomas Romano. But in either event, this is the PSI. And Respondent's Exhibit No. 119 is the report on Thomas Romano, and I see what happens. That's the face sheet from the one on Thomas Romano.

Mr. ANDERSON. Now, Judge, when you say the face sheet, what is the face sheet?

Judge HASTINGS. The face sheet includes the comments of the court and what, in fact, the court recommends, if anything, and generally the kind of institution that a person is recommended to, as well as the objectives.

Mr. ANDERSON. And so that is a document that you prepared at the time, or a judge prepares at the time——

Judge HASTINGS. This is a document that I literally on the bench recite. And Marilyn Carter, or whomever the deputy clerk is at that point in time, makes notations, and then it's pushed back up to me for my signature once those notations are put on this particular document.

Mr. ANDERSON. Judge, what date were those documents?

Judge HASTINGS. July 8, 1981, on both of them.

Mr. ANDERSON. And they're both signed by you?

Judge HASTINGS. That is correct. But I believe the pre-sentence report doesn't—the pre-sentence report came to my chambers or was available for my chambers and the defense and prosecution May 5, 1981.

Mr. ANDERSON. Now, Judge, what was the purpose, what did you declare to be the purpose for the sentence you imposed?

Judge HASTINGS. Punishment.

Mr. ANDERSON. And where did you recommend that the Romano brothers——

Judge HASTINGS. A minimum security facility, and I recommended Eglin and that's in between Panama and Pensacola, Florida.

Mr. ANDERSON. Did you make any other recommendations?

Judge HASTINGS. Yes, that particularly Mr. Thomas Romano, he had severe medical difficulties, and I was mindful of them, and I recommended that he be at a medical facility. I further recommended that the court had no objection to any early parole that they might achieve as it pertained to Thomas and Frank Romano. And I don't wish to leave Frank Romano out on the health question because he had a clear example of emphysema that he wheezed often during the course of the proceedings in the case.

Mr. ANDERSON. Mr. Chairman, I would move the admission of Respondent's 118 and 119 in evidence.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 118 and 119 and were received in evidence.]

Judge HASTINGS. Mr. Anderson, there is one thing that I would like to bring to your attention, and that is the exposure of the penalties of the Romanos. There's been some issue with reference to that. As to Counts 1 and 6, they were exposed to 20 years. The remaining counts, 2, 3, 5, and 12, five years. Counts 4, 7, 8, 9, 10, and 13, they were exposed to five years and monetary fines in various denominations. As to Count 11, they were exposed to five years. As to Count 15, they were exposed to 20 years and a monetary fine, and three years on Count 18. And you must remember that they were convicted on all those counts.

Mr. ANDERSON. Judge, do you recall what the probation officer pre-sentencing investigation recommended you sentence?

Judge HASTINGS. Yes. They recommended the exact sentence that I gave the Romanos.

Mr. ANDERSON. And that was three years?

Judge HASTINGS. That is correct.

Mr. ANDERSON. Mr. Chairman, you said yesterday had the judge identify the docket from the *Haitian* case. You noted its bulk. I have modified it now to include only the first nine page. This is the period from the date of its filing in June 1981 through the date the case was reassigned following the arrest and the early phases of the investigation, and it covers only the particular period which has been placed in issue in this case. I would at this time move the admission of Respondent's Exhibit 162 modified to include only the first nine pages of that docket.

The CHAIRMAN. Is there objection to that exhibit?

Mr. BARON. There is still an objection on the grounds of it is totally irrelevant, and we have not seen the pages. We haven't had any discussion about the pages that were intended to be offered.

Mr. ANDERSON. I have a full exhibit of the first nine pages.

Mr. Chairman, I want to make a point in terms of its relevance. We did not frame the Articles. We did not elect to make this a pattern of contact kind of matter. Nonetheless, that is what is before the Senate, is an allegation of a pattern of contacts.

In order to present the respondent's case, we must be permitted to show the context of how these matters evolve in the courtroom, off the bench, and what have you. The House has isolated telephone message slips, this record, that record, to show contacts that occurred. Those occurred in the context of the life of this man, and this man is a busy judge. One part of the busy judge aspect of this man was the fact he had heavy cases. The docket there reflects—and it's a published opinion which we'll cite—that on October 6th--you've already seen the court diary that shows you he was in court all day until late—he signed a *Romano* order which was later published, but he also signed an order enjoining the United States.

If you read that docket, you can see that a great deal of his time over that period—and of his law clerk's time—was consumed in preparing for a significant matter, a matter that eventually went to the Supreme Court. He is entitled to have the context in which these allegations focus set and not be limited to isolated events.

Mr. BARON. May I respond?

The CHAIRMAN. Yes, you may. Very briefly.

Mr. BARON. There is no reference in here to Mr. Borders. There is no reference in here to the Romanos. If it's a question of whether Judge Hastings had other cases on his docket, nobody disputes that. And I don't understand what possible relevance this case or anything on these docket sheets could possibly have to the issues before this tribunal.

The CHAIRMAN. The objection will be overruled. The exhibit will be admitted for whatever value it has.

Mr. ANDERSON. Thank you, Mr. Chairman.

[The document referred to was marked Respondent's Exhibit No. 162 and was received in evidence.]

Mr. ANDERSON. Mr. Chairman, I would also at this time, in order to save a bit of time on the examination because I think they belong in the record, move the admission of Respondent's 157, which is the transcript of proceedings held in *United States* v. *Hastings* on February 17, 1982; Respondent's 164, which is the transcript of proceedings held on March 2, 1982.

The transcript of those proceedings are relevant—first of all, as you know, we have suggested that the entire record in the *United States* v. *Hastings* is important, but these are relevant and relevant at this time because those are the proceedings in which Mr. Mavrides, Mr. Hirschhorn, and Judge Gignoux are reviewing the grounds upon which Mr. Hirschhorn ultimately withdrew. It was on March 2nd that Mr. Hirschhorn withdrew, and that is included in that transcript.

Moreover, they are also the proceedings where the court states as early as February 17th its intent to stay the proceedings if Judge Hastings elects to appeal from the order denying his motion to quash, and March 2nd is the order on which after the notice had been filed that the judge formally ruled that the proceedings would be stayed until such time as the appellate proceedings had been fully exhausted.

The House has interjected the question of the shifting nature of Judge Hastings' representation throughout the case of *United States* v. *Hastings*, and there is also the question of whatever the relevance is of the claim that production of the letters for Hemp

was delayed. It bears upon the fact that there were no discovery proceedings or other proceedings going on from the time of the appeal until such time as it was re-established.

The docket that is in evidence indicated that Judge Gignoux set the first status conference after the appeal was over for November 4th. These are records that bear upon facts that are of real consequence in this case. I would ask that they be admitted as part of the record.

The CHAIRMAN. Let me be clear as to exactly what you're proposing to introduce here. It's the transcript of hearings before Judge Gignoux?

Mr. ANDERSON. Yes, sir, on pretrial motions. The first is Wednesday, February 17, 1982, when the motion to dismiss and quash—the constitutional motion, if you will—was denied. But at the same time, the parties are discussing what was already being reported in the newspapers about a conflict between Mr. Mavrides and Mr. Hirschhorn over who was in charge here, and some disquiet about that. The court also made clear its view that should a notice of appeal be filed, that would result in the termination of the case against Judge Hastings while it was in the court. There were further proceedings on March 2nd at which Mr. Hirschhorn formally withdrew as counsel for Judge Hastings, and the court formally entered its stay order. So it's the transcripts of those two proceedings that I'm asking to have entered at this time.

The CHAIRMAN. What is the House position on this?

Mr. BARON. We probably do not object, but we would like a chance to look at this independently. We did not know that they were going to be offered, and we would just like to review it.

The CHAIRMAN. Could we put off a decision on that effort to have those exhibits introduced until the House has had a chance to review them later in the morning or early this afternoon?

Mr. ANDERSON. No problem, Your Honor.

The House, I take it, has copies. Do you want additional ones?

Mr. BARON. Not really.

Mr. ANDERSON. Your Honor, yesterday we were in the March, I think, of 1982 period, and we had gone through your interview with Mr. Pride in Columbia, South Carolina, and the telephone call. You mentioned somewhere in there that there was another conversation you had had with Pride about this matter. I wonder if you'd tell the committee about that.

Judge HASTINGS. Yes. At some point in time—and I don't have a distinct memory as to the point in time, but I had a discussion because Hemphill continuously was concerned about this letters business. And I explained to him what Borders and I were doing. I don't remember when. But it was not in his car on the way to the airport, and, quite frankly, I don't remember whether it was in Swerling's office or when. But I had a conversation in which I expressed to him exactly what Borders and I were attempting to do on his behalf.

Mr. ANDERSON. Now, if I might inquire, Mr. Chairman, the House has not offered but it did include in its book House Exhibit 128, which was a transcript of a conversation. We have not seen it; I just don't know where it is, where the original tape of that conversation is. Do we know that?

The CHAIRMAN. Counsel, are you asking the House?

Mr. ANDERSON. I'm asking the House, because if we have both, I'd like to see them admitted. I have not had an opportunity to listen to the tape myself.

The CHAIRMAN. I wish we could make these inquiries outside the regular proceeding. In this case, could the House represent what the situation is with regard to that tape recording?

Mr. BARON. We did not have the tape. We had the transcript, and we asked the FBI to get us the tape. I'm not absolutely positive as I sit here whether we have received it recently, but we can check. But I don't know at this point.

Mr. ANDERSON. If you could check that over the noon hour, it would be helpful.

The CHAIRMAN. If you would check and, if you have the tape, make it available to respondent, we would appreciate that.

Mr. BARON. Fine.

Mr. ANDERSON. Now, Judge, subsequent to March 2, 1983, who were your counsel at the trial level?

Judge Hastings. Andrew Mavrides and Patricia Williams, and William Waterman was still involved in the case at that time. And subsequent to that, Professor Anderson, you were still involved, certainly, on the constitutional issues that were being raised. And at other points Andrew Mavrides and Patricia and myself worked with Stanley Preiser and Barbara Fleisher from Charleston, West Virginia.

Mr. ANDERSON. Now, at that time, how was Mr. Mavrides employed or what did he do?

Judge HASTINGS. He was an attorney, and he had his own office. He was at one point in a partnership and then in a rather loose association with those persons that he shared office space, but he practiced law.

Mr. ANDERSON. And in March through—in the spring and summer period, how was Ms. Williams employed?

Judge HASTINGS. She was working for the Economic Employment Opportunities Commission based in the Miami office as a staff attorney.

Mr. ANDERSON. Now, did you have counsel present to observe the trial of William Borders?

Judge HASTINGS. Andrew Mavrides was there with his then wife, who is a court reporter, whose name is Pat Young. And my express purpose was to try to learn as quickly as I could everything that was going on in the Borders trial.

Mr. ANDERSON. And did there come a time when Ms. Williams resigned from her job with the Equal Employment——

Judge HASTINGS. Yes, but I don't remember the exact date. But whenever it was that she resigned, I would think it would be close to the period when the discovery proceedings started again.

What you have to understand is we didn't have a lot of resources, and I don't say that in any snide manner. The simple fact of the matter is that a lot of people, including Ms. Williams, worked after hours on their jobs on this particular matter, including members of my staff. I felt constrained to not utilize them during the day period that they were on their regular job, but

many of them gave of their own time, weekends, Saturdays and Sundays included. Therefore, we were able to meet muster.

Mr. ANDERSON. Now, Judge, during this period, where physically were the defense records? What offices were you using?

Judge HASTINGS. In Andrew Mavrides' office.

Mr. ANDERSON. Judge, let me direct your attention forward now to November 4th. I'll represent to you that the docket shows that that's when the first remand pretrial conversations getting ready for trial occurred. Do you recall that period?

Judge HASTINGS. Yes, I do.

Mr. ANDERSON. Now, throughout the period, had you and your counsel been trying to locate William Dredge?

Judge HASTINGS. When the stay was in force, we were trying to locate William Dredge. From the time that I read his name in the October 11th edition of the Miami Herald, we were trying to find William Dredge. And I might add that we went to some elaborate efforts in an effort to do that, including hiring an investigator that we felt was extremely street-wise and knowledgeable about south Florida. And we did everything we could to have William Dredge produced as a material witness at that trial.

Mr. ANDERSON. May I approach the witness, Mr. Chairman?

The CHAIRMAN. Excuse me?

Mr. ANDERSON. May I approach the witness?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Your Honor, I show you what's been marked Respondent's Exhibit No. 158 as a group and would ask if you can identify that.

Judge HASTINGS. Yes, sir. If we can call it a composite exhibit, No. 158 would be letters directed to various individuals over the signature of Patricia Graham Williams, and the essence of each of the letters was to seek the whereabouts of William Dredge and asserting that we wished to interview him and likely call him as a witness at the trial.

Mr. ANDERSON. Now, those letters were sent at your knowledge and direction as part of your effort to prepare——

Judge HASTINGS. Yes, but I wouldn't like you or anyone to believe that that's the only thing that we did in an effort to try to get William Dredge. There were proceedings before Judge Gignoux. There were conversations with the prosecutors in the case. To the extent that the FBI would talk to us, which was very little, there were conversations attempted to be had with those persons in the FBI that had responsibility. And, obviously, we were never able to get him.

That became a source of contention continuously throughout the proceedings.

Mr. ANDERSON. Now, Judge, the address Ms. Williams shows on this letterhead is 1700 Los Olos Boulevard in Fort Lauderdale. Whose office was that?

Judge HASTINGS. That was Andrew Mavrides' law office.

Mr. ANDERSON. Your Honor, I would move the admission of Respondent's 158.

The CHAIRMAN. Is there objection?

Mr. BARON. No objection.

The CHAIRMAN. It will be admitted.

[The document referred to was marked Respondent's Exhibit No. 158 and was received in evidence.]

Mr. ANDERSON. Now, after Judge Gignoux conducted his status conference, Your Honor, was it still a matter of concern to you and your counsel to attain access to Mr. Dredge?

Judge HASTINGS. No question.

Mr. ANDERSON. Let me show you what has been marked Respondent's Exhibits 159 and 160 and ask if you can identify those.

Judge HASTINGS. These are letters written by Andrew Mavrides to this—the November 4th letter is from Andrew Mavrides to Reid Weingarten. Respondent's Exhibit No. 160 is a November 9, 1982, letter from Reid Weingarten to Andrew Mavrides.

Mr. ANDERSON. Now, do those letters—what are those letters concerning, Judge?

Mr. BARON. Mr. Chairman, we'd object. The letters would seem to speak for themselves. I don't think they need to be characterized.

Mr. ANDERSON. Let me re-frame the question, Mr. Chairman.

Judge, using those letters to refresh your recollection, what are the dates of those letters?

Judge HASTINGS. November 4, 1982, Mavrides' letter, and the stamp at the top of Reid's letter is November 9, 1982.

Mr. ANDERSON. And do those letters reflect a process that was ongoing between opposing counsel?

Judge HASTINGS. Indeed they do.

Mr. ANDERSON. What was happening there, Judge?

Judge HASTINGS. Discovery talk with reference to Jenks material, with reference to items that needed to be turned over, items that had been turned over, and requests for further information concerning witnesses, and also the feasibility of a discovery conference.

Mr. ANDERSON. Now, in the November period, had Judge Gignoux directed that a discovery conference be held?

Judge HASTINGS. I don't know right from memory, but I can't imagine that Judge Gignoux was not making every effort to assure that discovery would be completed by a certain time. So I can make an educated guess that such a direction was given to us by Judge Gignoux.

Mr. ANDERSON. And did there come a time when the court entered an order directing that all materials to be used at trial be produced?

Judge HASTINGS. Indeed he did. And as a matter of fact, it was—you know, the United States Government does not have to provide defendants in criminal cases the 3500 material until such time as a witness takes the stand. And Judge Gignoux was able to exact from the prosecution at least that we should receive what is referred to as Jenks material, and he asked them if they would make that exchange seven days in advance.

I personally made that exchange of further materials that we provided to Reid Weingarten and he provided to me. I was amused by it because early Jenks became a problem because page 34 followed page No. 188, and there were deletions and copies that couldn't be read. And it made me angry, but we did the best we could.

Mr. ANDERSON. Now, Judge, the Jenks material problem is different than the production of documentary exhibits?

Judge HASTINGS. Oh, no question but that was—I was just pointing out how Judge Gignoux was meticulously going about trying to make sure that everybody would be ready for trial and that there would not be discovery problems.

Know this, Professor Anderson. There were no discovery violations in this case by the defendants at all. If there were discovery violations—and I believe not only looking in retrospect but at that time I believed that there were discovery violations. The failures to produce William Dredge as a material witness when we sought him, to my way of thinking was a gross discovery violation. There were others that occurred as well.

But the simple fact of the matter is the indicia of a discovery violation, can you or anyone believe that if there was any problem that Reid Weingarten and Robert Richter were having, two of the sharpest shooters sent to try anybody on earth, that they would not have sought from Judge Gignoux an appropriate order, motion to compel, rule to show cause? There's nothing in this record sanctioning the defense for failure to produce anything. And the simple fact of the matter is everything was produced; all matters pertaining to it were culled over like you wouldn't believe. And the simple truth is that the prosecution was not hampered at all in going forward as they saw fit. We were seriously hampered before and during the proceedings.

Mr. ANDERSON. Now, Judge, let me just put that in context. You were active in your own defense as a lawyer as well as a client, weren't you?

Judge HASTINGS. From day one.

Mr. ANDERSON. And was it your practice in this case or was it your practice when you were a lawyer to rush out immediately after the Government and make a dump? I mean, I don't want to make this——

Judge HASTINGS. Mr. Anderson, when I practiced law, I didn't have the luxury of discovery. I began practicing law at a time when even a police report in the State of Florida was not provided to the defendant. So I grew accustomed to not having the free range of discovery. I also had presided as a State court judge and a Federal judge, and I understand the nature of a trial.

To answer you specifically, my view about a trial, particularly one involving the United States Government when a person is a defendant, is to tell the prosecutor: I will see you in court. That's your best shot, and to then go about the business of doing those things that you are directed by the court to the letter. I feel that that's exactly what we did in these proceedings.

Mr. ANDERSON. Now, Judge, when the court ordered final production, you did produce the letters for Hemp, did you?

Judge HASTINGS. We produced the letters for Hemp, and I don't remember what else. But we produced other things, and so did the prosecution. And I don't remember what it was, but I'm sure that that particular inventory is easily accessed to.

Mr. ANDERSON. Let me take you back now a bit, Judge, with those letters for Hemp. I think you testified yesterday that initially you just put them in the drawer in the desk in your chambers.

Judge HASTINGS. Yes. I'm sure that that must have been what I did.

Mr. ANDERSON. Well, from that point on, if you could tell the committee, where did you keep the letters after the indictment was filed?

Judge HASTINGS. In my possession for a period of time, but ultimately in Andrew Mavrides' safe. One of the things that was funny about it, Andrew began to unravel, and he was being literally put out of his office. And I had a difficult time getting him to open the safe. And when he told me that it was opened and I went to his office on my own, I felt very eerie about that. I went at night, and his safe was open and had been rummaged, as a matter of fact, but the letters were there.

Then a lady who continued to help us even though she was no longer working for Andrew named Jeanette Montee, somewhere along the line, either I or Patricia arranged to put them in her possession, and she prepared the appropriate receipt, and Reid Weingarten picked them up from Jeanette Montee.

Mr. ANDERSON. Judge, let's——

Judge HASTINGS. But, you know, I want to work backward on this particular matter because it has been raised in the trial and has been raised here. How was the Government prejudiced? I still am trying to find out how. I thought that they would be able to tell when they got these letters the exact date, to the time and minute. I mean, you know, we're the people that can tell you how the ancient hieroglyphics got on the Rosetta stone. And I honestly thought that. Therefore, there was nothing to be gained by keeping them from the Government, and I think that too much attention has been placed on that. And I rather resent it, Mr. Anderson.

Mr. ANDERSON. Your Honor, let me also talk, if we might, for a moment, about why wasn't Andrew Mavrides with you at trial.

Judge HASTINGS. Andrew Mavrides as an individual began to experience severe physical problems and severe emotional problems. And I read his testimony last week before the Investigating Committee, and these letters that are the respondent exhibit—or the letter that is Respondent's Exhibit No. 159—it's the first time I read his testimony—he characterizes it as the last rational act that he remembers doing during that period.

Andrew had two heart attacks. He wasn't coming to his office. All of us were genuinely concerned about that and were reaching out to him, but at the very same time, matters were ongoing. Let me give you an example of when I really knew that I had a problem with Andrew's inability to perform, and it's a clear one. We needed to get subpoenas out, and I hustled up the money and gave Andrew the list of witnesses that we wanted to receive subpoenas and the money for them. And for a solid week—I was away for about four days, and for a solid week he did nothing. And when I got back, I thought that he had done the subpoenas, and for yet three or four more days, he didn't say anything to me, and the subpoenas weren't even served. And we were getting ready just about to go to trial at that point. And I tell you, that really unnerved me, and we had to hustle to make sure that everyone who was receiving a subpoena would understand the nature of it once they received it.

I felt then and I feel now very badly about what happened to him. Suffice it to say, ultimately he was disbarred and just before his death was about to get his license back. And I wish that he had.

Mr. ANDERSON. Judge, in March, you had expected that Mr. Mavrides would be with you in the——

Judge HASTINGS. Oh, indeed. I thought that he would be with me, co-counseling with Patricia Williams and myself.

Mr. ANDERSON. Mr. Chairman, could I move the admission of Respondent's 159 and 160. That's the exchange of letters between Mr. Mavrides and Mr. Weingarten.

The CHAIRMAN. Yes. Representative Bryant, did you have a——

Mr. BRYANT. No objection to those exhibits.

The CHAIRMAN. The exhibits will be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 159 and 160 and were received in evidence.]

The CHAIRMAN. Did you have another point that you were standing to make?

Mr. BRYANT. I'm watching an exhibit on the way in, and I'm about to raise an objection to that one, Mr. Chairman.

The CHAIRMAN. Oh, OK. All right. Why don't you go ahead with that one? And if it's offered into evidence, we'll hear an objection on it.

Mr. ANDERSON. Can I get it identified first, John?

Your Honor, I wonder if you could identify what's been marked as Respondent's Exhibit No. 163.

Judge HASTINGS. Yes. This is a Tropic Magazine article, Exhibit No. 163, Mr. Chairman, that featured—Tropic Magazine is the magazine section of the Miami Herald, and it featured Andrew Mavrides as a person who was a famous lawyer, then a famous fugitive. That's what it says on the cover.

Mr. ANDERSON. And what's the date of that article?

Judge HASTINGS. The date of the article is February 5, 1984.

Mr. ANDERSON. And for those who don't know—and to give credit even to some of our antagonists—who publishes Tropic Magazine?

Judge HASTINGS. The Miami Herald.

Mr. ANDERSON. Is that their Sunday magazine?

Judge HASTINGS. That is their Sunday magazine.

Mr. ANDERSON. Your Honor, I would move the admission of this article. I recognize that it would be inappropriate in most court proceedings, both on grounds of hearsay and otherwise. But other witnesses here, as I understand is customary, have been alive to present their résumés and talk about their background. This is not an article that was written by Judge Hastings. We do not claim that it has any particular relevance to the facts of this matter, but it is the only source we can show to establish who Andrew Mavrides was and the decline in his condition.

The House has made it a point, at least in argument of some issue, as to Judge Hastings—or at least raised questions about Judge Hastings' decision to go to trial with Ms. Williams who at the time was relatively inexperienced, and I think it's important to see that Mr. Hirschhorn's departure was not merely leaving Judge Hastings with—the committee must understand who Mr. Mavrides was. We offer it solely to provide the committee an understanding

of who Andrew Mavrides was and, unfortunately, what happened to him.

The CHAIRMAN. There is objection, I gather, from the House.

Mr. BRYANT. Mr. Chairman, we would submit that in no proceeding or trial or any other proceeding would a magazine article be relevant if it's offered to prove the truth of the statements in the article, which this article is being offered for. It makes all kinds of wild allegations. It is a feature article designed to interest the readers of apparently a Sunday supplement type magazine in the Miami Herald, and it has no probative value whatsoever.

Judge Hastings' testimony with regard to Andrew Mavrides' condition is sufficient to offer as evidence with regard to why he left as counsel, and for that reason we object to the admission of the magazine article in evidence.

Mr. ANDERSON. May I respond?

The CHAIRMAN. You may briefly respond.

Mr. ANDERSON. Two points. There are in the House exhibit list a number of Miami Herald articles, which I believe have come in. But even more important, we come back to what happened throughout this period has been placed in issue by the House. Mr. Mavrides is dead. This is the best available information about who Andrew Mavrides was. It wasn't commissioned by Judge Hastings. It wasn't commissioned by the House. It was written independently.

Judge Hastings must be permitted to establish the context in which the events which the House seeks to isolate occurred. And it goes to the same thing as the telephone message pads, the court records; the events the House would like to isolate as relevant did not occur in isolation. They occurred in the lives of human beings.

The CHAIRMAN. Counsel, I think the committee has been very liberal in permitting you to establish the context, and we certainly want to continue that. But I do think the objection is well taken to the admission of a magazine or newspaper article that's offered for the truth of what's in there. If the judge feels that there is a need or if you feel there is a need to further substantiate testimony on Mr. Mavrides, we'll consider that. But I don't think it's proper to try to do it through a newspaper article or a Sunday supplement to the newspaper. So we'll sustain the objection.

Mr. ANDERSON. I will ponder that while we move along, Judge.

Now, just so the record is clear, where is Andy Mavrides today?

Judge HASTINGS. Andrew Mavrides is dead.

Mr. ANDERSON. In any event, there did come a time when you went to trial, didn't there, Judge?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Let me now try and establish some of the context of that. What resources did you have available for you as you—we've gone through November, we're at December. Discovery is over. Talk to us a bit about how were you preparing for trial in the December up until January 10th when the show began.

Judge HASTINGS. Night and day, with Patricia Williams. In an effort to do everything that we could to meet all of the requirements of the court, and in addition thereto to prepare as best we could to meet the challenge of the evidence and to offer our own. I also from time to time in overtime work had the assistance of those

persons who I have identified, but we were working around the clock, and I'll be quite frank: it's very reminiscent of what's going on right here before the United States Senate.

Mr. ANDERSON. Now, Judge, do you recall when the trial began?

Judge HASTINGS. Yes, sir. I believe the trial began January 11, 1983.

Mr. ANDERSON. And let me take the period of the trial prior to the time you took the stand. What was going on there? How were your days? How were Ms. Williams' days filled? What staff support——

Judge HASTINGS. Completely consumed. Completely consumed with preparation as best we could.

Mr. ANDERSON. And would it be fair to say that you were in trial during the day and preparing for tomorrow at night?

Judge HASTINGS. Oh, until 3:00 and 4:00 o'clock in the morning. Again, very reminiscent of what's going on here.

Mr. ANDERSON. Now, you had made the decision, hadn't you, Judge, that you would take the stand in that case?

Judge HASTINGS. Oh, there was never any question.

Mr. ANDERSON. Could you describe for the court in general terms how you prepared and Ms. Williams prepared you for your days on the stand?

Judge HASTINGS. Well, I don't want to repeat that, but it's similar. I felt that I was going to be able to tell the truth, and I thought that the easiest way to do that was to do it with a full measure of spontaneity. But what you have to understand is that Patricia Williams and myself talked about the facts in this case all of the time. And when I say all of the time, I don't mean every conversation, but a lot from October 9, 1981, until January 11, 1983.

I felt that she was fully familiar with the facts. I know that I was fully familiar with them. And, therefore, the same thing that I told you two days ago, Professor Anderson: Ask me the questions, and I will give you as truthful an answer as I can recall. And, therefore, we didn't have a dress rehearsal. There was no such thing. The only attempt we had at that, Alan Ehrlich worked with us one day, and he was going to play prosecutor. And somehow or another, it offended Patricia, and she went shopping. And I was left with Alan Ehrlich. And that's the only preparation that we had.

Mr. ANDERSON. Excuse me a moment, Mr. Chairman.

[Pause.]

Mr. ANDERSON. Mr. Chairman, I don't immediately have before me, but I would like to ask if we could, there were two volumes of Judge Hastings' testimony at trial admitted by the House in evidence. And we have reached that point, if they could be placed before the judge.

The CHAIRMAN. What are the exhibit numbers for these exhibits?

Judge HASTINGS. Mr. Chairman, Exhibit 156, part 1 and part 2, and they are House Managers Exhibit 156.

Mr. ANDERSON. Now, Judge, how long were you on the stand, if you recall?

Judge HASTINGS. Over a two-day period. I don't recall the exact amount of time in terms of hours or minutes.

Mr. ANDERSON. I think it's time, Judge, that we confronted the accusations against you fairly specifically because, as I count it, some 15 of them relate to that testimony.

Judge HASTINGS. All right, sir.

Mr. ANDERSON. Now, Judge, Articles II, III, and IV of the Articles of impeachment charge that you knowingly made false statements under oath when you denied that you were a participant in William Borders' conspiracy, in a conspiracy with William Borders. Were those statements false?

Judge HASTINGS. Were the statements false?

Mr. ANDERSON. That you made at trial false.

Judge HASTINGS. Absolutely not.

Mr. ANDERSON. Specifically, Judge, you were asked, "Did you agree with and conspire with William Borders to influence in any way the performance of your judicial duties?" Your answer was, "No, I did not." Was that answer truthful then?

Judge HASTINGS. That answer was truthful then, and that answer is truthful now.

Mr. ANDERSON. Further, you were asked, "Did you agree with Bill Borders and intend knowingly and voluntarily to participate in any kind of illegal undertaking?" And your answer was, "None whatsoever. I did not do that, nor would I have done so no." Was that answer true then?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Is it true now?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Further, you were asked, "Let me say it this way: Is not the gist of what Mr. Borders said to the man he thought was "Romano" was that he would eliminate their jail sentences for $125,000 as a show of proof, A, he'd produce you at any restaurant they wanted, and, B, a substantial portion of the property would be returned to them?" Your answer in the transcript is, "I believe that was the gist of the conversation." The question: "Of course, you had no idea what was going on?" The answer: "No, I didn't."

Were your answers truthful then?

Judge HASTINGS. Yes, they were, Mr. Anderson.

Mr. ANDERSON. Are they truthful now?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Judge Hastings, Article V deals with your dinner at the Fontainebleau on September 6, 1981. The question at trial was posed to you, "Judge, would you tell the jury why you went to the Fontainebleau Hotel on September 16th?" Answer: "As I indicated, William Borders had indicated to me that he would be at the Fontainebleau Hotel during the dinner hour, and for purely social purposes he and I were going to meet expressly for the purpose of socializing. I know that for a fact William Borders indicated to me that he would be in Miami at the Fontainebleau Hotel on September 16th, and that is the primary reason I went there."

Was your answer truthful to that question?

Judge HASTINGS. Oh, indeed, it was.

Mr. ANDERSON. Is that the answer you again give today?

Judge HASTINGS. No question.

Mr. ANDERSON. Is that answer from your present recollection?

Judge HASTINGS. Oh, yes.

Mr. ANDERSON. Further, the House reports, and correctly, that the question was asked, "Judge, did you dine at the Fontainebleau Hotel on September 6, 1981, to show your participation in a bribery scheme?" And your answer: "Absolutely not."

Was that answer true?

Judge HASTINGS. Absolutely.

Mr. ANDERSON. Does that answer remain your answer today?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Now, Judge, let me talk a bit with you about the September 16th dinner. The House has reported that your letting two place settings be removed as evidence that your testimony was false. Can you explain that?

Judge HASTINGS. Professor Anderson, I believe the two place settings were moved. I knew that I was going to have dinner. I didn't know whether Bill Borders was going to have dinner. And I assume had he arrived at that hotel, as he had indicated to me that he would be there, and he had determined to have dinner, two place settings would have been placed there, or one, or however many other persons would have been along.

Mr. ANDERSON. Judge Hastings, your testimony indicated that you had asked of the maitre d' and the waitress or a hostess, told them that you were waiting for friends from DC. Did you ever receive any FBI 302 statements concerning those conversations?

Judge HASTINGS. No, sir. You asked me that on yesterday. I didn't receive any such FBI 302's. I don't believe they exist.

Mr. ANDERSON. The House claims that the fact that Mr. Borders was attending a boxing match at Caesar's Palace in Las Vegas is further evidence. Did you know that William Borders was at that fight?

Judge HASTINGS. I had no way of knowing that.

Mr. ANDERSON. Had he ever told you or discussed it with you?

Judge HASTINGS. No, he did not.

Mr. ANDERSON. And did you know at the time of your trial that William Dredge had phoned Caesar's Palace on September 16, 1981?

Judge HASTINGS. I certainly didn't. And had I know that William Dredge had called Caesar's Palace, as would be the case had I had an opportunity to ask William Dredge some things at that trial, I believe that may have been borne out. But it seems to me that that was yet another of the many mysteries that were held away from us.

Mr. ANDERSON. Now, Judge, as you recall it, did the prosecutors argue that your testimony about the dinner at the Fontainebleau was false?

Judge HASTINGS. Oh, indeed, they did, vigorously.

Mr. ANDERSON. Judge, what was the verdict in that case?

Judge HASTINGS. Not guilty, so say we all. And not only that, the only time in the history of my being a lawyer or judge, every juror spontaneously stood without being requested to do so and shouted, "Not guilty."

Mr. ANDERSON. Transcripts don't show everything.

Judge, let me turn to Article VI, the events of September 12th, that accuses you of lying under oath when you said you were surprised. Specifically, the House reports, and correctly, that you gave

the following response in testimony, "He—Mr. Borders—knocked on the door, and I answered it, and I said words to the effect some kind of surprise, trying to remember exactly what I said, but I was surprised to see Bill."

Was that a true statement, Judge?

Judge HASTINGS. Oh, sure.

Mr. ANDERSON. Were you surprised to see Bill Borders?

Judge HASTINGS. Most assuredly. I certainly didn't expect to see him at the hotel.

Mr. ANDERSON. And the House also reports that you later were asked, "Weren't you waiting for Mr. Borders?" And you gave the answer, "Oh, absolutely not."

Was that a true statement, Judge?

Judge HASTINGS. Yes, it was, Professor Anderson.

Mr. ANDERSON. Now, Judge, I think we covered the circumstances of September 11th and 12th adequately yesterday, but let me ask you this: To your recollection, did Mr. Weingarten argue to the jury that your testimony about your surprise was false?

Judge HASTINGS. He argued that. He in addition argued that I met with Bill Borders at the airport here in Washington during that period of time. And he argued other things with reference to the Articles. I can't think of anything that's in the Articles that Reid Weingarten didn't put forth a very powerful argument against. And he said that I was lying, and he said that I was fabricating the letters. The exact same thing that we're here about.

Mr. ANDERSON. Now, Judge, why did Mr. Weingarten, if you recall, why did he argue that that was relevant to an accusation that you were a co-conspirator in a bribe?

Judge HASTINGS. I would have to ask Mr. Weingarten, but I know what he argued. I don't know why he argued it.

Mr. ANDERSON. Judge, let me turn to Article VII, charges that you were lying under oath with respect to why on October 5, 1981, you told Jeff Miller to prepare the order. Specifically, the committee report reports that you gave as part of an answer, "But the most pressing consideration was the complexity of the forfeiture aspect and his leaving, the possibility of his not being there when I returned from the long trip with the exception of one day that I was going to come back to try a juvenile that was in jail. It is for that reason that I made the statement to him that I wanted the order done."

Judge, was that a true statement?

Judge HASTINGS. Yes, sir, it was.

Mr. ANDERSON. That comports with your present recollection?

Judge HASTINGS. It does.

Mr. ANDERSON. Further, you were asked, "What was the urgency to issue the order on October 6th?" The answer: "Because Jeffrey was going to be leaving and I was going to be away for the month of October."

Was that your reason for telling Jeffrey to get the order done?

Judge HASTINGS. That was my reason.

Mr. ANDERSON. Judge, let me reprise. I think we understand. I don't think it's a fact in dispute that Mr. Miller was leaving, but when you gave Jeffrey that instruction you wanted the order done, how long did it take him to do it?

Judge HASTINGS. It evidently took him until the next day to complete his work.

Mr. ANDERSON. And had you asked him to do it during—did you ask him to do it during the week of September 14th to September 18th?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Did you ask him to do it during the week of September 21 through September 25th?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Did you ask him to do it at any time before October 5th?

Judge HASTINGS. No, sir.

Mr. ANDERSON. And, Judge, we come to Articles VIII and IX concerning the draft letters for Hemp.

The committee report identifies as the false testimony you're alleged to have given on these Articles the following items—and let me go through them with you and confront them:

The question was asked, "At about 5:00 in the afternoon, you called Bill Borders on October 5th?" The answer: "Yes, I"—you were interrupted. Question: "Why did you call him?" Answer: "I called him then because on October 4th at some time in the afternoon, evidently he left a message for my mother, something about Hemphill, and again it had to do with the matters that he and I had been in rather ongoing discussions about, trying to raise money for him."

Judge, was that why you called Bill Borders?

Judge HASTINGS. Indeed.

Mr. ANDERSON. Was your testimony at your trial true as you understood it then?

Judge HASTINGS. It was true for then; it's true for now, Professor Anderson.

Mr. ANDERSON. You were further asked, and the House has identified it as a false statement, the question: "Now, when you use the word 'letters,' were you referring to letters?" And the answer was, "I certainly was."

When you used the word "letters," Judge, were you referring to letters?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Was your testimony at trial true?

Judge HASTINGS. Yes.

Mr. ANDERSON. That's the same testimony you give today?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. The question was asked, "Mr. Borders goes 'Ahhah,' and then what do you say?" Answer: "I say, 'And everything's OK. The only thing I was concerned about was, did you hear—did you hear if, ah, hear from him after we talked?' " Question: "And what were you talking about there?" Answer: "I am referring specifically to the call that I received from Borders either on September 20th or 21st, where he indicated to me he expected to see Hemphill again, and he was asking him specifically about his exact financial condition."

That was your testimony there, sir. Was that true at the time you gave it?

Judge HASTINGS. Yes, it was.

Mr. ANDERSON. Is that your present recollection?

Judge HASTINGS. That's my present recollection.

Mr. ANDERSON. Further, the House identifies, the question was asked, "And Mr. Borders?" "See, I talked to him and he wrote something down for me." "What did you take Mr. Borders to mean there?" The answer: "The best I can think, I took that he meant had to do with Hemphill's financial condition."

Judge, was that a truthful statement when you made it?

Judge HASTINGS. Yes, it was.

Mr. ANDERSON. Can you think of anything else today?

Judge HASTINGS. There would be nothing that I could add or detract from it.

Mr. ANDERSON. Further, the House identifies, question: "Just so I'm perfectly clear on your answer, you thought he was going to get some more information about Mr. Pride?" Answer: "That is all I could possibly have had in my mind at that time, sir."

Was that a truthful statement, Judge?

Judge HASTINGS. Yes, sir, it was.

Mr. ANDERSON. The question was asked, "Now, are these the letters to which you refer in your October 5th conversation?" I take it referring to what is in evidence here as the infamous drafts. Answer: "Certainly."

Was that a truthful statement, Your Honor?

Judge HASTINGS. That was a truthful statement.

Mr. ANDERSON. The question was asked, "Judge Hastings, you said you wrote these letters on the bench. On what date did you write these letters?" Answer: "October 5th."

Was that a truthful statement, Your Honor?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Is that when the letters were written?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. The question was asked, "All right. So we're 100 percent clear on this, you wrote these letters, Government or Defense Exhibit 29, from the bench during the Santorelli trial on October 5th?" Answer: "One hundred percent clear."

Was your answer 100 percent truthful then, Your Honor?

Judge HASTINGS. It was 100 percent truthful then; it's 100 percent truthful now.

Mr. ANDERSON. Now, Judge, apart from some matters, I think we've reviewed most of the matters that were there. In fact, I think we reviewed them all. Let me just go to—did you think Mr. Weingarten was a competent trial lawyer?

Judge HASTINGS. I don't only—I didn't only think that he was. The answer to your question is yes, and with an explanation. I think Reid Weingarten is one of the best lawyers that did that kind of work. And I might add, I also thought that he was a very decent fellow.

Mr. ANDERSON. Now, Judge, if you recall, did Mr. Weingarten argue that the lateness of your producing those letters was evidence of their fabrication?

Judge HASTINGS. Yes, he did.

Mr. ANDERSON. Did he argue that the telephone conversation was code?

Judge HASTINGS. He surely did.

Mr. ANDERSON. Did he argue that your testimony and explanations on these points were false?

Judge HASTINGS. Yes.

Mr. ANDERSON. Was that a significant part of the Government's case then?

Judge HASTINGS. Indeed, it was.

Mr. ANDERSON. What was the jury's verdict then?

Judge HASTINGS. Not guilty.

Professor Anderson, I said something that might cause some people to feel that it was incredulous. There was a moment in this trial when Reid and I were at serious adversarial posture, when he, after Judge Gignoux in a chambers conference for two-and-a-half hours that's not on the record, was upset about what had happened and so was I. And it was at 9:00 o'clock at night. Reid made the comment to me, he said, "You know, Judge, the only thing I like about this trial was"——

Mr. BARON. I object. This would be hearsay.

The CHAIRMAN. The objection will be overruled. The witness can continue with his statement.

Judge HASTINGS. What he said was that, "You know, Judge, the only thing I like about this trial is you." The reason I brought that up is because I said and I feel that Reid Weingarten is a gentleman. I don't feel that way about Judge Richter.

Mr. ANDERSON. Judge, let me talk to you about Articles X through XIII. Those Articles accuse you of making false statements with respect to four telephone numbers that were identified at trial.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Were those statements—were the numbers you identified false?

Judge HASTINGS. The numbers that I identified were false, but when you use that term "false," you're pitting it against true. I was mistaken when I testified about the numbers. I said to you yesterday, I repeat, I don't understand how that ever got to be such a bone of contention. The question was not where I called this man; it was did I call him. He has testified that we spoke several times. Therefore, I didn't carry and don't now a complete memory of folks' telephone numbers. And when I saw those records, I had seen them maybe a day-and-a-half before I testified on the witness stand. And that could have been at 2:00 or 3:00 o'clock in the morning, and I was rather elated that I had found the so-called calls to Columbia. And that's the only reason——

Mr. ANDERSON. Well, Judge, I think we need to push that a bit farther, though. Talk a bit about how you prepared for your testimony and how you did come across those numbers.

Judge HASTINGS. It was me looking at voluminous telephone records, and I just saw those particular calls and thought that they were the calls to Hemphill. I knew that I had spoken with him. And it was early in the morning.

Mr. ANDERSON. Now, looking at the House exhibits of your testimony, what were the dates on which you testified, sir?

Judge HASTINGS. If I look at Exhibit 156?

Mr. ANDERSON. Well, I think both of them.

Judge HASTINGS. OK. January 28th and that was a Friday, and we had a recess. And I testified again January 31st.

Mr. ANDERSON. Using those dates, do you know when you first began looking at these telephone records for calls that might be relevant?

Judge HASTINGS. Over the weekend, I believe.

Mr. ANDERSON. And was Ms. Williams looking at those with you?

Judge HASTINGS. No.

Mr. ANDERSON. Why not?

Judge HASTINGS. Ms. Williams was not feeling well at all during that period of time.

Mr. ANDERSON. Now, Judge, when you found those telephone records and you went into court and identified them, did you believe that those were numbers, calls in which you spoke——

Judge HASTINGS. Yes. Yes. I believed it. And I still think that had we had Hemphill Pride's telephone records, we would have been able to find some additional information along those lines. And I also know that I talked with Hemphill at places other than my home and office.

I believed that they were his numbers.

Mr. ANDERSON. Well, did you have Hemphill's numbers committed to memory?

Judge HASTINGS. No.

Mr. ANDERSON. They appear in Agent Simmons' 302 statement. Were you able to give them to him when he interviewed you on the night of October 9th?

Judge HASTINGS. I gave that telephone number to Agent Simmons the following day.

Mr. ANDERSON. Mr. Chairman, at this time, I would ask leave to publish as an admission by a party opponent a report in the House—report of the Committee on the Judiciary which might save us some additional volume in this record. The statement I would proffer as an admission is page 53 by the House Committee on the Judiciary: "There is no evidence relating to whether Judge Hastings called any of these numbers in the year immediately preceding the trial."

It bears upon the fact here, since there are nothing in the other records indicating that Judge Hastings would have known these. It's an admission by a party opponent. It seems to me it should come in on that basis without my trying to reconstruct records that may not exist.

The CHAIRMAN. What is the House position on this?

Mr. BARON. I think it's part of the record. We don't object to that statement. It's part of what we published, and we stand by it.

The CHAIRMAN. It will be admitted.

Mr. ANDERSON. Thank you.

Now, Judge, to the best that you can tell, where did these long-distance telephone records come from? Where did you get them?

Judge HASTINGS. Most, if not all of them, I got them from the prosecutor.

Mr. ANDERSON. And do you know how the prosecutors got them?

Judge HASTINGS. Under the appropriate rule of evidence and procedure, I believe Rule 16. I believe that's how they would have achieved at least some of them. But they had immense resources,

so it would be difficult for me to know how they achieved them all. But that would be my belief.

We tried that as well for some of the records, particularly Hemphill Pride's records, and it's still just—I don't think it's anything that's germane about these proceedings, but I don't know how we didn't get the telephone company to send us Hemphill's records. And we went through the aegis of the court under the appropriate rule, and we still didn't get them.

Mr. ANDERSON. Judge, let me ask you a little bit more about that. You've testified to Mr. Weingarten's ability. Did he confront you with these errors at trial?

Judge HASTINGS. No, he did not. Not on the telephone numbers, he did not.

Mr. ANDERSON. He confronted you on a lot of other points?

Judge HASTINGS. Just about everything that we said, just about every word was being examined. They were working at night just like we were working at night.

Mr. ANDERSON. What would you have done if he had pointed out these errors to you at trial?

Judge HASTINGS. I would have admitted that they were mistakes and been about the business of trying to find the phone calls.

Mr. ANDERSON. Now, did Mr. Weingarten in either his questioning of you, Mr. Pride, or in argument make any claim that there had been no phone calls between you and Mr. Pride?

Judge HASTINGS. No, he didn't make such a claim. Pride testified that we had spoken, and I testified that we had spoken.

Mr. ANDERSON. Judge, let me just frame the question as the inference is there. Did you knowingly make a demonstrably false statement to corroborate a fact that wasn't in dispute?

Judge HASTINGS. No, I did not.

Mr. ANDERSON. Did you make a mistake?

Judge HASTINGS. I certainly did.

Mr. ANDERSON. It won't be the first one made by people in these proceedings.

Judge, let me turn to Article XIV. Article XIV charges that you testified falsely when you said you had made the calls from the L'Enfant Plaza Hotel. Specifically, the question was asked, "What did you do when you got down to your room?" Answer: "The first thing I did was walk straight to the phone and picked up the telephone and called my mother."

Was that a false statement at the time you made it, Judge?

Judge HASTINGS. No, sir.

Mr. ANDERSON. "When you called your mother, what did you learn?" "When I called my mother, she was—I do not wish to exaggerate. I have never known her to be hysterical as she was. It was just that simple, and I couldn't calm her down."

Judge, when you testified at trial, to the best of your information and belief, was that a true statement?

Judge HASTINGS. Yes, it was.

Mr. ANDERSON. You had talked with your mother and she was hysterical?

Judge HASTINGS. Indeed.

Mr. ANDERSON. "Did you make any other calls?" Answer: "Yes, I did."

Had you made other calls, Your Honor?

Judge HASTINGS. Yes, I had.

Mr. ANDERSON. Had you made local calls that day?

Judge HASTINGS. I did. I called Barbara Whiting and Carolyn Lewis, and I called my office to speak with Barbara Katzen as well. I didn't call to speak with Barbara Katzen. I spoke with Barbara Katzen when I called.

Mr. ANDERSON. Now, the question was asked, "Had Hemphill Pride arrived in your room by this time?" The answer was, "No, he had not."

Did Hemphill accompany you down to your room?

Judge HASTINGS. Hemphill didn't go to my room with me most immediately. He took the baby back to his room, and he came subsequently.

Mr. ANDERSON. The further question was asked, "Who did you call?" The answer was, "I called you"—addressing Patricia Williams.

Judge HASTINGS. Uh-huh.

Mr. ANDERSON. To the best of your recollection then, was that a true statement?

Judge HASTINGS. That's the best of my recollection.

Mr. ANDERSON. And question: "All right. And what happened there?" Answer: "I called you at your office at the Economic Opportunity Commission here in the DuPont Plaza Hotel, and I learned that you had been interviewed by the FBI and the particulars, at least in part, as to what had transpired in your interview."

Was that your recollection then?

Judge HASTINGS. That's my recollection.

Mr. ANDERSON. Was that an honest statement, Judge, when you made it?

Judge HASTINGS. Excuse me?

Mr. ANDERSON. Was that statement made to the best of your information and belief?

Judge HASTINGS. To the best of my information and belief at the time.

Mr. ANDERSON. You also made the statement, "In addition to that, I learned that you had called my office and learned the FBI were there for the express purpose, among other things, of interviewing my staff."

Did you learn that from Ms. Williams?

Judge HASTINGS. I learned it from Ms. Williams. That portion I may very well have learned in Baltimore. I'm absolute—I'm not certain that it was in the initial call.

Mr. ANDERSON. But you did learn it on that date? You had learned it from Ms. Williams——

Judge HASTINGS. Oh, everything that I've testified to happened on that day, October the 9th.

Mr. ANDERSON. Finally, you were asked, "You're certain that sitting in that hotel room after Mr. Pride gave you the news you made two long-distance calls to Florida, and you charged them to your room?" Your answer was, "Right."

Judge HASTINGS. Yes. And I said to you in response to questions yesterday, Professor Anderson, that I knew that there were no telephone records at the L'Enfant Plaza when I testified. I just remem-

ber what happened. There was nothing for me to gain by talking about either of those calls. And I testified because I was trying, as I am here, to testify truthfully.

Now, I could have made a lot of mistakes during the trial, and I may make mistakes here. I don't have a photographic memory, and I don't have an infallible way of going about remembering and recalling all events. I think if you were to examine this record—that is, House Managers Exhibit 156—you will see often in there that I said that I didn't remember certain things.

October the 9th was a day of confusion, and, put bluntly, I was scared. And I was scared about what I thought was developing. And so to say in that kind of awesomeness that one has a total memory, I don't think that you can do that. And I tried to do the best that I could. I didn't have FBI 302's. I wasn't surveilling me. I wasn't keeping a record. And, fortunately for me—and I don't mean to be offensive to the Government's offerings from the FBI, but I did a better job of remembering what happened than they did.

Mr. ANDERSON. Judge, let me confront you. Let me divide two things. You've testified to the confusion and the situation you found yourself thrust into on October 9th. By 1983, when you testified at trial, were you scared or confused at that time?

Judge HASTINGS. I may look calm here, but there's nothing about wearing all of the negative celebrity that attends this particular situation that makes me feel comfortable. Yes, I was afraid during those proceedings. The end result would have allowed that I would have gone to jail had I been convicted, and that was ever present in my mind. And, yes, I was afraid of those proceedings. There's no question about that.

Mr. ANDERSON. But over the time you prepared for trial in the preceding time, had you attempted to reconstruct as best you could the events of October 9th?

Judge HASTINGS. Yes, sir, I did.

Mr. ANDERSON. Was the recount of the events you gave at your trial your sincere, honest, and full belief as you had reconstructed of what happened in fact?

Judge HASTINGS. Yes, sir. To the best of my ability, I thought that we put forth as honestly and truthfully as we could the evidence as I understood it and recalled it. And I'm doing the exact same thing here before the United States Senate today.

Mr. ANDERSON. Judge, let me go through. It came out, I take it—do you recall these HOBIC printout slips that have been introduced here?

Judge HASTINGS. Yes, I recall them.

Mr. ANDERSON. Were they introduced at your trial in 1983?

Judge HASTINGS. Mr. Blocker testified at my trial and introduced the HOBIC computer.

Mr. ANDERSON. Now, let's talk a bit about how that happened. When did he testify at your trial?

Judge HASTINGS. He testified in rebuttal.

Mr. ANDERSON. That was after you had rested?

Judge HASTINGS. That is after we had rested.

Mr. ANDERSON. How long, how much in advance did you have to examine those HOBIC printout slips and talk with Mr. Blocker?

Judge HASTINGS. Judge—well, first off, we didn't have them at all in the pretrial and during the trial.

Mr. ANDERSON. Those weren't produced in discovery?

Judge HASTINGS. They were not produced in discovery. And what happened is that Mr. Blocker testified, and then my recollection is that Judge Gignoux gave me 15 minutes to review the whole big printout. And I conducted the cross-examination of Mr. Blocker, and during that period of time, I was able to point out to him nothing but just minor glitches that seemed to have occurred in the HOBIC printout.

But Ms. Williams and myself and Alan Ehrlich, who was trying to assist us from the standpoint of staff assistance, didn't have but 15 minutes.

Mr. ANDERSON. Well, Judge, let me just, to put that in context a bit, you may have squealed a bit, but did you think it was unfair for Reid Weingarten to have sprung Mr. Blocker and the HOBIC slips on you in rebuttal?

Judge HASTINGS. I don't think there was ever any question but that—well, I was taken by surprise. In a trial, to call something unfair is one's characteristic from their point of view. I have a jaundiced point of view. I thought it was unfair. I'm sure Reid didn't. I thought Reid was taking advantage of a moment that he thought would produce the result that he was about the business of trying to achieve. But to not have had those records and for them to have known—Barbara Cruel talked to the FBI, and Barbara Cruel knew and knows that I went there looking for those records. So surely they could have and should have produced them to us at some point in time. Even, even, when he heard me testify if he would argue that the numbers didn't come up until Judge Hastings testified about, immediately after I testified he should have handed them to Ms. Williams or to myself as I perceive fairness.

Now, then, he did not and, therefore, we didn't have ample time to call in HOBIC computer experts and all of the things had we had the resources, and I doubt that we would have, but we didn't have that opportunity.

Mr. ANDERSON. Well, Judge, I think it's important all set in context. You've indicated you have considerable respect for Reid Weingarten as a trial lawyer.

Judge HASTINGS. One of the best.

Mr. ANDERSON. And whatever your perception after the fact, is this the kind of thing that trial lawyers, prosecutors or defense, do?

Judge HASTINGS. Well, I presided in an awful lot of cases, and yes, that is sparring that takes place during the trial and it advantages and disadvantages folk, depending upon the point of view that's being sought in the adversarial posture.

There were more serious and egregious violations that I thought rose to the level of prosecutorial misconduct, including the highly respected, from my point of view, Reid Weingarten. But that issue was lost along the way.

Mr. ANDERSON. Well, irrespective of that issue, I guess the point I'm trying to make, Judge: Is trial lawyering among lawyers a contact sport?

Judge HASTINGS. You've identified it as arms and elbows and feet slashing around. As much as we would like to think that it is not,

the reality is that it is. And let me say that for a very long time I wanted to disbelieve lawyers when they said that a trial under the aegis of the United States criminal sanctions against individuals is a trial by ambush. Well, I came to know that in first kind.

Mr. ANDERSON. Judge, let me now return to these records just briefly. When you in your 15 minutes, or, indeed, thereafter in preparing for closing, did you or Ms. Williams note the gap that there were no long-distance calls from 2:54 to 4:10 p.m. shown in the HOBIC records?

Judge HASTINGS. No, we did not catch that. And had we, I'm sure that I would have brought it up.

Mr. ANDERSON. Did Ms. Williams bring it up in her closing argument?

Judge HASTINGS. I don't believe that she did.

Mr. ANDERSON. Judge, let me turn now to Article XV and confront you with your testimony there. Article XV concerns your decision to fly from Baltimore-Washington International Airport rather than National Airport. And as the House reports, you were asked the question, "Why did you not go to the airport near—to the nearer airport?" Answer: "There was never any question in my mind but that at the time in the evening I thought that all flights that left Washington at that particular point in time either went through Atlanta en route to Miami. But I was absolutely certain there were none until 10:00 p.m."

Question: "Did you consider that there might be FBI agents looking for you at National Airport?" Answer: "It was of no concern to me had there been FBI agents at National Airport, Dulles Airport, or Baltimore Airport. I had no desire or design not to cooperate with any authorities."

Question: "And your thinking was that there would be no flights from National Airport that would fly you non-stop from National Airport to Miami?" "That was my thinking." "Even though two months before you had taken one?" "Yes, sir. That was my thinking at that particular time. I've traveled that way an awful lot, an awful lot."

Judge Hastings, that's the entire colloquy that the House has brought in support of its accusation. Were those answers true when you gave them?

Judge HASTINGS. Oh, indeed, they were.

Mr. ANDERSON. Do they comport with your memory today?

Judge HASTINGS. They comport with my memory, and what you have to understand is that that day was like few that any individual would be subjected to. And to think that I would have an absolute memory of every flight that was going some place at a given time, that was just an impossibility.

Now, in retrospect, it would have been easier, it does appear, to catch the flight from National Airport. But I told you, and I've told everybody, that I didn't have but one concern of primary importance to me, and that was my mom. And I thought that I would get home quicker, and I was mistaken about that, by going to Baltimore.

I didn't go to Brazil. I went home. And I still—eight years later, I'm just taken aback about that. Now, if you look at it and you wish to put it in that kind of context, is it suspicious of me trying

to run from the FBI? No, because when the FBI did confront me, as tired as I was, it would have been much simpler for me—and I wasn't feeling good. It would have been much simpler for me to say, "Agent Simmons, I'll talk to you tomorrow." I didn't have to talk to him, and I did.

You know, just to suggest that I went to Baltimore trying to get away from the FBI, if I had wanted the FBI not to find me, they'd still be looking for me.

Mr. ANDERSON. Now, Judge, you were both a lawyer and at that time a Federal judge. Did you know, to the extent anyone knows, the legal definition of "flight"?

Judge HASTINGS. Yes. I knew it then, and I know now that the Eleventh Circuit, at least, has made it something that it wasn't. And I'm the cause of that.

Mr. ANDERSON. In your opinion, as of October 9, 1981, did a decision by someone, a potential accused, to return home after learning that law enforcement officials want him constitute flight?

Judge HASTINGS. Sure.

Mr. ANDERSON. Did it? Just to go home?

Judge HASTINGS. To go home, you're saying?

Mr. ANDERSON. Yes. Is that legal flight?

Judge HASTINGS. No, no. No, that's not flight. I'm sorry. I misunderstood you, Mr. Anderson.

Mr. ANDERSON. And to the extent that anyone might have suggested an inference from such conduct, would the fact that such a person voluntarily submitted to an interview after he returned home, and the fact that there were independent reasons, such as an invalid mother, for returning, have negated any inference in your judgment?

Judge HASTINGS. I think it would have mitigated against such an inference. As to whether or not it would have negated it, I think that people can believe anything they want to believe.

Mr. ANDERSON. Against that background, Judge, I think you've testified your real purpose in going home was to get home to your Mama.

Judge HASTINGS. That was my primary purpose. I told you that I felt all of the things that flashed across my mind about that day. And I knew in my heart of hearts that if I was being mentioned in some kind of bribery allegation, and if I had been seen with William Borders during the course of that particular day, that it was going to be an issue of some magnitude in the media, as well as likely events that would be talked about for a long time. And so to be home is the most comforting umbrella that one can have. And while my concern was for my mom, my concern also was for members of my staff and anyone else that might very well have a need to have been addressed by the authorities in that manner. And I was really genuinely concerned about getting home.

Mr. ANDERSON. Judge, if those were your reasons for going home, to be on your own turf, to support your mom and others, why at trial did you even offer what had been cited as improbable explanations for your decision to go to Baltimore? Why did you bother to say it? It wasn't necessary, was it?

Judge HASTINGS. I didn't have to say that, and it wasn't at trial. I'm the one, I'm the same person that told Mr. Simmons how I got

there. I didn't have to say that to him that night. I told him I went to Baltimore. I told him the flight number that I was on. And I had called earlier and indicated that.

I mean, I—suffice it to say that I didn't have to.

Mr. ANDERSON. Well, at the time you made those assertions, did you believe they were true?

Judge HASTINGS. Did I believe they were true? I knew that they were true.

Mr. ANDERSON. Do you believe them to be true today and know them to be true?

Judge HASTINGS. I know that they are true.

Mr. ANDERSON. Judge, again, let me return—I've almost run out of these statements, but Mr. Weingarten——

Judge HASTINGS. Good.

Mr. ANDERSON. Did he argue that your testimony on this and the prior points, other material points, was false?

Judge HASTINGS. Yes, he did.

Mr. ANDERSON. Did he argue to the jury that the fact that a United States District Court Judge would make false statements should be taken as further evidence of his guilt?

Judge HASTINGS. Yes, he did.

Mr. ANDERSON. Ms. Williams rose on your behalf and recounted the evidence from your point of view, did she not?

Judge HASTINGS. Yes, she did.

Mr. ANDERSON. One more time, judge. What was the jury's verdict?

Judge HASTINGS. Not guilty, sir.

Mr. ANDERSON. Judge, let me move briefly through the period following your acquittal. After the jury verdict in your acquittal, what did you do?

Judge HASTINGS. I resumed my duties. I was acquitted on a Friday. I went to work Monday.

Mr. ANDERSON. And did you reassume a full caseload of a United States District Court Judge for the Southern District of Florida?

Judge HASTINGS. Within the normal framework of time that my recused cases came back to me. It was kind of funny to me because some of them that I was hopeful would go away were still there. And, yes, eventually, I received a full civil and criminal caseload, and I believe some two weeks after I resumed my duties I was in full bloom again, working and pulling oar, as all of the judges of the Southern District of Florida.

Mr. ANDERSON. Now, Judge, just briefly, would you explain to the committee how are cases assigned, criminal and civil, in the Southern District of Florida?

Judge HASTINGS. On the blind filing system. When a case comes in, it's assigned blind filing in rotation.

Mr. ANDERSON. And were you just put back in to the blind rotation?

Judge HASTINGS. I was put back into the wheel, but I also was given a certain number of cases, as we always do, that balances the court system, and that's how I got back some of the dogs.

Mr. ANDERSON. In point of view, when a new member of the court is appointed, there are cases transferred to him; is that correct?

Judge HASTINGS. That is correct.

Mr. ANDERSON. And, Judge, would it be fair to say that when you're deciding what cases to transfer, it tends to be the dogs?

Judge HASTINGS. I learned that from Joe Eden, one of the preeminent scholars in the courts.

Mr. ANDERSON. Now, Judge, when you returned, did you have any problem with your colleagues on the court?

Judge HASTINGS. None whatsoever.

Mr. ANDERSON. And over the next five years, how many motions asking you to disqualify yourself have been filed?

Judge HASTINGS. One.

Mr. ANDERSON. And what did you do with that motion?

Judge HASTINGS. I disqualified myself.

Mr. ANDERSON. Why?

Judge HASTINGS. Because I had had dinner with a major law firm, some of its membership, and their opponents were spying on them. The essence of the dinner didn't have anything to do with ongoing litigation, but I thought in fairness to both sides that it would be appropriate if I were to disqualify myself. And I did.

Mr. ANDERSON. And have there been other cases when you felt it necessary to recuse yourself from cases?

Judge HASTINGS. One that I can remember, and I know that it had to do with—I had either 50 or 100 shares of stock in a company that the litigation arose before me. When I put it on the record—and I do want to make something clear because Senator Rudman asked Mr. McCrary the other day about discomfort with reference to appearing before me.

I believe, if the record were perused, the first thing that would have come out or in the early portion of my statement would have been that I knew Mr. McCrary, and that if either side were uncomfortable with his going forward, then I would recuse. That was both in the case involving the Seminole Indians and the case where Jesse testified that he lost his fee.

But I have had occasion, as I'm sure many judges do, to have to do that often. But only in one case did I recuse *sua sponte* for the reason that I thought that it would be appropriate for me to because I had a small amount of stock in that particular company—that wasn't worth nothing.

Mr. ANDERSON. Now, Judge, have there been any—well, first of all, tell the committee, just so the record is clear, what is the distinction between disqualification and recusal?

Judge HASTINGS. Disqualification is when under one or two rules a lawyer advocating for his or her client feels that there is something that the judge has done that is inappropriate and seeks to have he or she disqualify themselves. It's very delicate language, but that's the essence of it.

Recusal is every judge has within his or her framework the discretion to recuse at will. And when we see things or spot things that we think would cause us to not be able to remain impartial and objective, we have the discretion to recuse. And that means to step aside, and that can come about in a setting, for example, like a Jesse McCrary appearing before me. Had I determined that I could not rule against him, I could easily have recused. Had I

sought to, the other side could have said because of my familiarity with him, "You ought to disqualify yourself, Judge."

Mr. ANDERSON. Now, has anyone ever sought in the Court of Appeals for the Eleventh Circuit to force you off a case?

Judge HASTINGS. Mandamus?

Mr. ANDERSON. Mandamus.

Judge HASTINGS. A couple of times. But Judge C. Clyde Atkins, who was the chief judge, told me about mandamus when I became a judge. He says it's like virginity. It doesn't hurt but one time.

Mr. ANDERSON. How many times have——

The CHAIRMAN. Counsel, we are halfway through a vote on the Senate floor. We will have to recess at this point for about 15 minutes while we go to vote.

Could you give us an estimate as to how much additional time you would expect on direct examination?

Mr. ANDERSON. Senator, I should think not more than 15, 20 minutes.

The CHAIRMAN. All right. We will recess for about 14 minutes while we vote.

[Recess.]

The CHAIRMAN. The committee will come back to order.

I am advised that we will have another vote in a very few minutes on the Senate floor and we would like to go ahead and do whatever additional questioning we can at this point before we have to go to that vote.

Mr. ANDERSON. Mr. Chairman, let me see if I—the Judge isn't here, the witness isn't here. Mr. Chairman, the Judge was last seen talking to his son. We will bring him when we have him.

[Pause.]

Mr. Chairman, I'm not sure the will of the Chair. At side bar and elsewhere, the managers have insisted that we not proceed in their absence, representing that they——

The CHAIRMAN. We have been informed by counsel for the House Managers that they have no objection to you proceeding.

Mr. ANDERSON. Your Honor, let me start by clarifying one point that I may not have pushed adequately on. Charlester Williams, how did he happen to leave your chambers?

Judge HASTINGS. At some point in time, it was near the end of the three-month period that he was there, Charlester moved on to Judge Peter Faye, I believe, when he left me, and Judge Faye is an Eleventh Circuit Court of Appeals judge. We had a little bit of dissension in the office and it was time for him to go on.

Mr. ANDERSON. And who informed him that it was time for him to go on?

Judge HASTINGS. Me.

Mr. ANDERSON. Judge, have you remained friends with Mr. Williams?

Judge HASTINGS. Oh, indeed. I think Charlester is, again, one of the finer lawyers around.

Mr. ANDERSON. Judge, there has come through the record, so let me just ask you flat out, do you think Charlester Williams had anything to do with disclosing the contents of the *Romano* order or talking about the *Romano* order outside chambers?

Judge HASTINGS. Absolutely not, nor do I think any other member of my staff, and had such information come to me—there are two things about that: If I had felt that that was the case or knew something about it, then I would have reported it to the authorities before any of this occurred. If I learned about it subsequently and previously to my trial, Charlester Williams would have been on the money and I would have been all over him, as would Mrs. Williams, as my advocate in that particular setting.

Charlester came from Washington. Charlester called Washington, DC often, and there is no question about that, but he's a fine gentleman, an outstanding lawyer, and I happen to have great respect for him and I don't believe that he told William Borders or anyone else anything about the *Romano* order.

Mr. ANDERSON. Judge, let's return now to the period following your acquittal. I think before we ended, we got back to the point where you had a full caseload and were working as a judge. But let me, without getting into issues that we've litigated before, briefly run through some of the things that happened and how they affected you.

Did there come a time when a complaint was filed under something called Judicial Conduct and Judicial Council's Reform and Judicial Conduct and Disability Act of 1980, hereinafter the Act?

Judge HASTINGS. 28 United States Code 372. A complaint was filed and, interestingly enough, Professor Anderson, four of the counts in the complaint were supported in total by newspaper articles.

Mr. ANDERSON. Judge, what happened with that complaint after it was filed—who filed it?

Judge HASTINGS. The complaint was filed by United States District Court Judge, the Chief of the Middle District at the time, William Terrell Hodges, and the Chief Judge of the Western Division of Georgia, Anthony Alaimo, and it was filed pursuant to the Act in the Eleventh Circuit Court of Appeals, where the chief judge at that time was John Godbold.

Mr. ANDERSON. Judge, did the Act require that these matters be kept confidential?

Judge HASTINGS. The Act requires, in one of its parts, that any matter brought to the attention of the Chief Judge, he or she has the responsibility of determining the meritoriousness of the complaint, and the only way that the matter can be made available to the public is if the chief judge and the complained-against judge, in writing, agree that the matter should be made public.

The very first thing that happened in this case—and there has to be a little bit of background here—Chief Judge Godbold had the responsibility, pursuant to his Judicial Conference responsibilities, having been appointed by then Chief Justice Warren Burger, to implement, along with other judges in the 13 circuits, this new provision of the law. He was the chairperson of that particular implementation committee.

Now, then, what he did was he issued a press release, without me asking him to do anything or him telling me that he was going to do anything, indicating that this complaint had been filed.

Professor Anderson and Senators, I urge upon you that that is a serious mistake, not only as it pertains to me—we are past that

stage now, but you must understand that that confidentiality has to be preserved, because either daily or weekly a complaint is filed against some United States District Court judge or appellate judge by some recalcitrant litigant or others, and most of them are spurious complaints, but very occasionally they rise to the level of requiring further inquiry pursuant to the Act, and there's no question about that.

But I defy you or anybody else in this room, other than in Miles Lord's situation in Minnesota and Judge Frank Battista in Cleveland, Ohio, I ask you, please, to find for me anywhere else—and I remember you and I at one time had counted 988 complaints that had been filed against United States District Court judges or appellate court judges and Article III judges in this country, and not one before or since has had a press release issued, indicating that a complaint had been filed. I think John Godbold was wrong then, I think he's wrong now, and even though it doesn't bear on whether or not I told a lie at trial, I think that these Senators and everybody in here needs to know that.

Mr. ANDERSON. Judge, what did you do, in response to that press release?

Judge HASTINGS. I wrote him and I said, "OK, Judge Godbold, if you're going to put it in the streets, let's put it in the streets. I write to you now, sir, asking you"—you know, there's another vignette about this that needs to be told.

Before the complaint was filed, John Godbold wrote to the Clerk of the United States District Court for the southern District of Florida and said seal the file of *United States of America* v. *Alcee Hastings*. And the haunting refrain of Senator Baker and Senator Ervin in the Watergate proceedings continues to come to mind, "What did he know and when did he know it," is something that I would like to investigate, but I'm here to be investigated and I understand that.

In any event, what I did was I filed a lawsuit through you alleging, among other things, that the Judicial Conduct and Judicial Disability and Reform Act was unconstitutional and, in addition to that, I wrote to Judge Godbold and I said, "Please, sir, let's make this public," and he wrote back to me and said that he would not agree, and pursuant to the Act, that was his right and, therefore, for three-and-a-half years in what I perceived to be the most star chamber-type proceeding that could be undertaken, these matters were ongoing, three-and-one-half years.

Mr. ANDERSON. Judge, if you recall, there was a considerable period before the hearings began, but do you recall that eventually Judge Godbold gave you notice that his committee would begin holding hearings?

Judge HASTINGS. Yes, he determined that there was merit to that complaint and he appointed five judges, including himself, pursuant to the Act, two United States District Court judges and two appellate court judges, and that matters would be ongoing and I was extended an invitation to be present or have counsel present or both.

Mr. ANDERSON. Now, when they announced they would begin holding hearings, what was the status of your lawsuit, if you recall?

Judge HASTINGS. It was in full bloom, alleging, among other things, a conspiracy within the framework of the judiciary; more specifically, mine and your concern was to address the constitutionality of that statute. I still think it is unconstitutional and we were never able to get that matter to the United States Supreme Court for resolution.

Mr. ANDERSON. Judge, did you go to Atlanta and participate in those proceedings?

Judge HASTINGS. I did not, and the statement that I made then I make now: I'm not in the habit of taking a rope to a lynching.

Mr. ANDERSON. Now, eventually the matter moved over to the House of Representatives, Your Honor, do you recall that?

Judge HASTINGS. That's correct.

Mr. ANDERSON. Did you testify in the House?

Judge HASTINGS. No, I did not testify in the House and I did not testify before Judge Godbold, either.

Mr. ANDERSON. Well, how many witnesses have the House called at its hearings there?

Judge HASTINGS. I don't remember the number, but I know the number that we offered Chairman Conyers and his committee should, and we offered 70, they called two to three, I think 3, Monsignor Walsh became their witness somewhere along the line.

Mr. ANDERSON. Why didn't you testify there, Judge?

Judge HASTINGS. I didn't testify there, for the same reason that I didn't testify before Judge Godbold, I didn't think, other than courtesy, that the proceedings were being conducted in a manner that was designed to ferret out the truth. I seriously feel, Professor Anderson, that if the proceedings had been conducted as these proceedings, the likelihood is strong that we might not be here.

Mr. ANDERSON. Judge, let me just briefly now, to recap one of my last two points: Can you tell the committee, to the best you presently recall it, over the years since your trial, the names of witnesses who you either thought were or now think would be relevant information who have died?

Judge HASTINGS. Yes, sir. It is hard to remember them all. I don't know that he would be a witness, but we've talked about Andrew Mavrides. My uncle's testimony has been admitted and he is my mother's baby brother and he has since died. Both of the Romano brothers—and there is a critical point about the Romano brothers, because I knew them well. We went to the hospital to conduct proceedings, most unusual proceedings, when one of them was having difficulty with his heart, and I got to know the Romano brothers. I might add that they are easily identifiable, and anyone that knew the two of them would know, among other things, that Thomas Romano was the leader of those two brothers, he was the facilitator of everything that they were doing, at least in terms of speaking parts. Frank Romano was a reticent individual. And if I had been participating in any kind of conspiracy, I can assure you, sir, I would have wanted to know whether Tom or Frank Romano were the persons with whom someone was meeting in any alleged conspiracy, because Tom Romano definitely was the leader in that particular situation. But they are both dead.

I keep hearing this allegation swirl in these proceedings and it is very disturbing to me that it swirls in these proceedings about

Santos Trafficante. I don't know any Santos Trafficante, I had no involvement with him, I participated in no concerns having to do with any of his business. I was presiding at one point in a case in which he was scheduled to appear before me. But Santos Trafficante is dead and, therefore, information that he might be able to provide is unavailable.

My understanding is that Joe Nesline and Brother Moscato are dead, individuals who could have provided—not Joe Nesline, but Moscato—they both are disabled individuals and unavailable.

William Dara is dead and could have provided information here. Sylvester Goodson is a person who was on our witness list, who knows that I gave Hemphill Pride $100 and asked him to pay for my incidentals and to get my suit. Sylvester Goodson, who is a friend that grew up with Hemphill Pride and is a mutual friend of mine and Hemphill's, is dead.

There are others and the others just don't come to mind as I'm reciting, but at one time I counted 11 people that would be persons who had information that would shed light on these proceedings, including Judge Edward Thaxter Gignoux, because Judge Gignoux undertook some matters without my information being provided to him, he *ex parte* unsealed certain matters in this particular case and provided them to either Judge Godbold's committee or elsewhere, he is dead, and there are other things that Judge Gignoux could have said I believe that would have borne on these proceedings and he no longer is available.

So, it is to my way of thinking an impossibility for us to reconstruct all of the events, with that many persons who have crucial information for or against me that could be provided in these proceedings.

Mr. ANDERSON. Judge, I won't go through it, because I think the record is reasonably clear, but there are also, you are aware, a fair number of documents that have been destroyed in the ordinary course of events over the years.

Judge HASTINGS. I have not destroyed any document. If documents are destroyed, again, they come from the other side. We've heard about rough notes that are not available. Interestingly enough, rough notes that are available—let me give you one example, the log of Bill Borders' arrest, Patricia Williams and I had a typewritten copy of that. I didn't see those rough notes and we asked for rough notes. We were told at some point in time that they were not available to us, and I believe that it is the habit, a bad one, of the FBI to destroy their rough notes, but, albeit, if anything is destroyed, it has not come from my side, it has come from the other side, at some place during the long trail of this saga.

Mr. ANDERSON. To not place too dark a picture, you are aware that telephone records and hotel records have just been destroyed in the normal course of business?

Judge HASTINGS. Oh, that's how they—and that would be the same with certain bank records and everything else that might be made available, yes, no hanky-panky, that's just how they do their business and they're gone.

Mr. ANDERSON. Judge, we are here in 1989 now, so let me ask you a couple more questions. You didn't testify in the House or

before the judiciary. Let me ask you this: Why did you testify before the jury in the 1983 trial?

Judge HASTINGS. There was no question in my mind that I needed to be in a position to testify, primarily it's a duly constituted and dignified proceeding. But more importantly, I could have not testified, but I felt if there was going to be any preservation of the integrity of the office that I held, the folk needed to hear from me, and so it is for that reason that I did not hesitate at all to tell the truth before that jury. There was never any question but that I would testify.

Mr. ANDERSON. Judge, you or at least your lawyers have been a little cantankerous about the intervening proceedings——

Judge HASTINGS. That's correct.

Mr. ANDERSON [continuing]. But you're here testifying today. Why are you here testifying before this body in 1989?

Judge HASTINGS. The same reason, I feel that the body is properly constituted and has the sole power to try impeachment, so I've been impeached and I've said from the outset and represented to the Chair that at some point I would testify, I'm here doing that and I feel very comfortable doing so and telling the truth, as I understand it, and my recollection being virtually the same as I believe it was during the course of my trial where I told the truth.

But understand this, intervening in the proceedings before the House managers and in the proceedings before Judge Godbold, we sought other avenues, addressing the subject of constitutionality as we perceived them. More important, I was advised by my lawyers that it would not be the proper thing to go forward. Now, I've overridden lawyers often, but I accepted that and I accept being here and I'm glad to be winding down in these proceedings, whichever way they go.

Mr. ANDERSON. Your Honor, you've only overridden me once in the past two days. Let me ask you two final questions.

Judge HASTINGS. If I had had my druthers, I'd have overridden you more. [Laughter.]

Mr. ANDERSON. Your Honor, Alcee, do you believe that the testimony you gave in 1983, at the time you gave it, was the truth and the whole nothing as you then knew it?

Judge HASTINGS. No question, Terry.

Mr. ANDERSON. Alcee, now, is the testimony you've given here, that you will give here, that you are giving here, do you believe that it is the truth and the whole truth, as the best you can reconstruct it?

Judge HASTINGS. As best as I can reconstruct events of what transpired 8 years ago, is exactly what I'm telling everybody in this room.

Mr. ANDERSON. And, Your Honor, as your counsel, have I covered everything that you think is important?

Judge HASTINGS. No, but I refuse to be garrulous.

Mr. ANDERSON. Mr. Chairman, I will put the Judge's garrulity to a test by tendering him to the House managers.

The CHAIRMAN. Would the House managers—we are in a live quorum, which means that in a very few minutes we will go to a vote on the Senate floor. What is the pleasure of the House manag-

ers? Would you want to start now? I doubt that we could go more than 10 or 15 minutes at most before we would have to interrupt.

Mr. BARON. Mr. Chairman, I think it is important, just as it was important that the direct be put on as sequentially as possible, that the cross be conducted in the same manner and we would ask for that.

The CHAIRMAN. Well, I do think, in light of the situation we have on the Senate floor right now, perhaps we should recess until 1:30, at which time we will reconvene and do the cross-examination.

Mr. BARON. Thank you, Mr. Chairman.

The CHAIRMAN. We will stand in recess.

[Whereupon, at 11:30 a.m., the committee was in recess, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Judge Hastings, if you would take the stand again, please? We have completed the direct examination by your counsel. Now, the House managers' counsel, Mr. Baron, if you would proceed with cross-examination?

Mr. BARON. Thank you, Mr. Chairman——

Mr. ANDERSON. Mr. Chairman, if I might interpose an objection briefly. For almost 200 years, the Senate conducted impeachment proceedings without staff appearing for the managers. Throughout these proceedings, the managers have made it clear, even with relatively minor witnesses, that they took political responsibility and needed to be here. I do object. I understand the committee's ruling that with respect to some witnesses that staff might proceed, but it does seem to me inappropriate, and I do make the objection for the managers not to take direct responsibility for the cross-examination of a United States district judge as respondent. I think that's inappropriate; I do object.

The CHAIRMAN. Your objection is noted and overruled. As I indicated earlier, Rule 15 of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials makes it clear that counsel for parties shall be admitted to appear and be heard upon an impeachment. And if the House managers would like this portion of the case handled by their counsel, that's appropriate.

You can proceed, Mr. Baron.

CROSS-EXAMINATION

Mr. BARON. Thank you, Mr. Chairman.

Good afternoon, Judge Hastings.

Judge HASTINGS. Good afternoon, Mr. Baron.

Mr. BARON. Before we begin, I'm going to hand you two things. One is a transcript of proceedings of August 1, 1989, in these proceedings.

Judge HASTINGS. All right.

Mr. BARON. And the other is a small version of the master chronology chart that's been alluded to earlier in these proceedings. We may refer to both of those.

Judge HASTINGS. Thank you.

Mr. BARON. Judge Hastings, earlier today, you testified concerning your relationship with Andrew Mavrides——

Judge HASTINGS. That is correct.

Mr. BARON [continuing]. Who was one of your counsel. And my recollection of your testimony is that at some point you gave to Mr. Mavrides the drafts of what have been referred to as the Hemp letters or the letters for Hemp for safekeeping in his safe; is that correct?

Judge HASTINGS. No. At some point they were placed in his safe. That's correct.

Mr. BARON. Were they given to Mr. Mavrides?

Judge HASTINGS. They were placed in his safe, and he knew that they were going to be there. And at some point, I'm sure he must have seen them.

Mr. BARON. Did you ever discuss those letters with Mr. Mavrides?

Judge HASTINGS. I had a hard time getting him to open the safe.

Mr. BARON. Did you ever discuss the letters with Mr. Mavrides?

Judge HASTINGS. Of course. At some point, I discussed them with him.

Mr. BARON. Now, you understand—I mean, your belief of Mr. Mavrides is that he was an honorable man, a truthful man?

Judge HASTINGS. I have the highest respect for Andrew Mavrides, and, yes, I do believe that, to the best of his recollection, he would try to recall events.

Mr. BARON. Well, are you aware that Mr. Mavrides testified before the Investigating Committee that investigated your case?

Judge HASTINGS. Yes.

Mr. BARON. And let me direct your attention to his testimony. It appears at pages 89 and 90 of the transcript of his appearance.

Judge HASTINGS. All right.

Mr. BARON. He's asked the question, "Do you recall any discussion with Judge Hastings about letters drafted for Hemphill Pride?" Answer: "No, I don't. That's not to say there were no conversations."

Question: "Let me show you, Mr. Mavrides, what previously have been marked in this proceeding as IC Exhibits"—and they give the numbers. They then correct the number. It was 427, A, B, and C, and I represent to you that I have checked that out, and they are the Hemp letters.

Judge HASTINGS. All right.

Mr. BARON. Then he's asked the question, "Have you had a chance to review those exhibits, 427, A, B, and C?" The answer was, "Yes." Question: "Have you ever seen those documents before, Mr. Mavrides?" Answer: "Not to my recollection. I may have." Question: "Do you have any recollection of seeing them?" Answer: "No."

Now, do you still maintain that you discussed those letters with Mr. Mavrides and gave them to him?

Judge HASTINGS. No question. I certainly do, and nothing you have said suggests that he did not. And I think—you see, Mr. Baron, we have a little bit of a problem that you raise. I read Andrew Mavrides' testimony, too, and why don't you read it all, and I think you will see that he was being grilled very actively and

ultimately said at some point during the course of that same testimony that you just read a part of, that he at that time had no recollection of same, but he's certain that he must have at some point discussed it with me. It's just that simple.

Mr. BARON. Now, Judge, I believe you testified yesterday—and let me direct your attention to page 3077.

Judge HASTINGS. All right.

Mr. BARON. You were talking about—I'm sorry.

[Pause.]

Judge HASTINGS. I have 3077.

Mr. BARON. Do you see in the middle of the page where you were talking about why William Borders was there at your investiture as a Federal judge?

Judge HASTINGS. Sure.

Mr. BARON. At that invest——

Judge HASTINGS. I don't see it, but I know why he was there.

Mr. BARON. I want you to look at the text of what you testified to yesterday.

Judge HASTINGS. All right.

Mr. BARON. That's why I'm directing your attention to it.

Judge HASTINGS. All right.

Mr. BARON. Do you see it now?

Judge HASTINGS. Yes.

Mr. BARON. OK. And your investiture took place in 1979; am I correct?

Judge HASTINGS. That is correct.

Mr. BARON. OK. And you stated yesterday that, "William Borders was there in his capacity as president of the National Bar Association, but not so much out of any friendship—and I did have a friendship with him. But had there been another president of the National Bar Association, that would have been the person. I specifically chose the NBA president, but that's why he was there." Correct?

Judge HASTINGS. Sure.

Mr. BARON. Judge Hastings, isn't it a fact that Bill Borders did not become the NBA president until July of 1980?

Judge HASTINGS. I think you're correct, but he was president-elect of the organization. And if I mis-spoke, I did.

Mr. BARON. OK. Who was the president?

Judge HASTINGS. I don't remember every president. Warren Dawson?

Mr. BARON. Well, I don't know either. I'm just wondering whether you do.

Judge HASTINGS. No, I—we've had a lot of them. I don't remember them all.

Mr. BARON. So, in fact, you did not have the president of the NBA at your investiture ceremony. You had Mr. Borders there, who was not then the president; is that correct?

Judge HASTINGS. He was the president-elect.

Mr. BARON. Now, Mr. Borders did play a significant role in your becoming a Federal judge, did he not?

Judge HASTINGS. I can't say that, Mr. Baron. I don't know what William Borders may have done. But I do know that I believe—excuse me, I believed that he helped me. I know that when I had a

meeting here I was summonsed by then Attorney General Griffin Bell to come here and have a conversation with him. Borders took me to the Justice Department on that particular day, had picked me up from the airport, whenever that day was. And when I got out of his car, his statement to me was, "Don't worry about it, buddy." And I took that, among other things, to mean that he would help me.

But in his own way, without me knowing exactly what he did for me, I would imagine that there are a significant number of United States District Court judges in this country that are African-American and white that William Borders had some say about what transpired. So in that sense, without knowing specifically what he did, sir, yes.

Mr. BARON. So you don't disagree with your counsel's statement in his opening statement that Mr. Borders was a political figure who, in truth, probably did have a good bit to do with Alcee Hastings' appointment to the bench?

Judge HASTINGS. I can't disagree with that, but he didn't—let me tell you why I got to be a United States District Court judge. I knew Richard Stone and Jimmy Carter.

Mr. BARON. Now, Judge, let me direct your attention to your testimony yesterday. Look at pages 3094 through 3098, just kind of——

Judge HASTINGS. Page 3094?

Mr. BARON. Through 3098.

Judge HASTINGS. I have 3094.

Mr. BARON. Would you take a look at those several pages there.

Judge HASTINGS. What is it you wish that I should look for, Mr. Baron?

Mr. BARON. Well, specifically, you were being asked about your visit to Newark to attend a seminar regarding juveniles. Do you recall that?

Judge HASTINGS. Yes.

Mr. BARON. And you stated Captain Wallo, I believe was the name.

Judge HASTINGS. Captain Earle Wallo, yes.

Mr. BARON. Right, and that you made a call to Madeline Petty's home around midnight?

Judge HASTINGS. I didn't know at the time that it was Madeline Petty's house. If the record reflects that it was her house at that point in time, I don't deny having placed a call.

Mr. BARON. Well, I believe your testimony on direct was that you agreed that any call you placed to Madeline Petty was—you didn't know Madeline Petty, you were trying to reach Mr. Borders.

Judge HASTINGS. There would have been no question in my mind but that I was trying to reach Mr. Borders.

Mr. BARON. OK. And——

Judge HASTINGS. Let me have it clear. I still don't know Madeline Petty.

Mr. BARON. I understand.

Judge HASTINGS. Sure.

Mr. BARON. And that your counsel represented to you that the evidence established that Mr. Borders was in Miami, and that you

then said, well, had you known that he was in Miami, you wouldn't have placed the call to Washington. Do you recall that testimony?

Judge HASTINGS. That was put to me that way. Yes, I recall the testimony.

Mr. BARON. OK. And if you look at 3097 and 3098—I'm just trying to recap to orient you in that material.

Judge HASTINGS. All right.

Mr. BARON. OK. Now, Judge, I'd like to put—one of the buzz words has become "putting things in context" around here. Let's put that call to Madeline Petty in context, could we?

Take a look at the chart in front of you.

Judge HASTINGS. All right, sir.

Mr. BARON. I would ask the members of the Senate committee, it might be useful for them to use the small versions of the chart. I have the large version of the chart over there.

It's the one labeled "Master Chronology."

Now, Judge, putting—you see your call—I'm sorry. You see your departure from Miami for Newark on May 5th at 6:55 p.m.? Look for the month of May.

Judge HASTINGS. I have the month of May.

Mr. BARON. And you see the blue entry, May 5th at 6:55 p.m., ALH scheduled to depart Miami for Newark?

Judge HASTINGS. Mr. Baron, I have fairly good eyes, but I'm having difficulty following what it is you're talking about. It's on this chart here? Is it right here?

Mr. BARON. It's this one right here. Do you see that?

Judge HASTINGS. OK. Sure. 6:55 p.m. to Newark.

Mr. BARON. Right.

Judge HASTINGS. Scheduled to depart.

Mr. BARON. Right. And that was the flight that you were going to take to attend that juvenile seminar?

Judge HASTINGS. I hope you know that I don't remember all of these details, but if this is what the record reflects, I have no denial——

Mr. BARON. That's exactly what you testified to yesterday——

Judge HASTINGS. Sure.

Mr. BARON [continuing]. In response to questioning; right?

Judge HASTINGS. Sure.

Mr. BARON. OK. And you called Madeline Petty at approximately 12:07 a.m., drop down two blocks. See the yellow one, May 6th, 12:07 a.m., ALH to Petty. That's a telephone call; correct?

Judge HASTINGS. All right.

Mr. BARON. You see that?

Judge HASTINGS. Yes. How long was that telephone call?

Mr. BARON. I don't know. I'm just saying that there shows a call from you to Petty at that time.

Judge HASTINGS. OK, but wouldn't that be a little bit significant?

Mr. BARON. Well, if your counsel wants to bring that out, I'm sure he will.

Judge HASTINGS. Oh, thank you.

Mr. BARON. Now, Judge, I'd like to place that call and that departure from Miami in context, if we could.

Judge HASTINGS. All right.

Mr. BARON. Isn't it a fact that on May 4th you had issued the first Romano forfeiture order?

Judge HASTINGS. I believe that that is the record. No question.

Mr. BARON. In which you forfeited approximately a million, two, just a little bit under a million, two hundred thousand dollars in property?

Judge HASTINGS. Sure.

Mr. BARON. And on May 4th, Judge, if you look right beneath that, there was a message from you to Mr. Borders marked "Urgent." You know, the little box that's checked off, "Urgent"?

Judge HASTINGS. Sure.

Mr. BARON. Do you recall what that call was for?

Judge HASTINGS. No, I don't.

Mr. BARON. Now, right below that, Judge, on May 5th, at 3:58 p.m., Mr. Borders flew down to Miami, arrived at Miami the next day.

Judge HASTINGS. It does appear that the record reflects that.

Mr. BARON. Incidentally, Judge, if you have any question about any of the supporting documentation for any of this, I will dig it out.

Judge HASTINGS. Thanks, Alan.

Mr. BARON. But I represent to you that all of this has been—is in evidence. And if you have a question——

Judge HASTINGS. I have no problems with that.

Mr. BARON. And on May 5th at 4:47 p.m., Mr. Borders reserved from Miami back to DC, leaving Mr. Dredge's number as a contact. Do you see that?

Judge HASTINGS. I see that.

Mr. BARON. And do you see beneath that that on May 5th at 6:50 p.m., Mr. Borders was scheduled to depart Miami for the DC airport? Do you see that?

Judge HASTINGS. I see that.

Mr. BARON. OK. And do you see one more entry, Judge, that—I'm sorry. I take that back. There it is. May 5th at 11:26 p.m., there's an entry of Dredge calling Petty.

Judge HASTINGS. Right.

Mr. BARON. Not long before you did. Now, Judge, isn't it a fact that Borders came down on May 5th in response to your call to him, that urgent call you made to him on May 4th, and that the two of you met at the airport? You both departed the airport within five minutes of each other in Miami.

Judge HASTINGS. Do you know for a fact that Borders traveled on this particular itinerary?

Mr. BARON. Everything we know says that he——

Judge HASTINGS. Do you know for a fact he did?

Mr. BARON. My question to you, Judge, is: Did you meet with him?

Judge HASTINGS. No.

Mr. BARON. You deny meeting with him?

Judge HASTINGS. Absolutely.

Mr. BARON. OK. And when you called Madeline Petty at around midnight that night, it's your testimony that you thought that Mr. Borders was still in Miami?

Judge HASTINGS. I didn't say that I thought he was in Miami. I said that I didn't know where he was.

Mr. BARON. You had no idea where he was?

Judge HASTINGS. That's exactly correct.

Mr. BARON. Nevertheless, you called his girlfriend around midnight on the chance he might be there?

Judge HASTINGS. I don't think that there's anything particularly unusual about me trying to reach him. But let me see, is there another missing call? Because if this is the first time I called Madeline Petty's house, then I would have gotten her number from Bill Borders' house. There is another time where I got her number from Bill Borders' house and called there.

So the answer to your question is, if there is a call to Madeline Petty, I was trying to reach Bill Borders. The time sequence? No question but that that's the time sequence.

Mr. BARON. On what basis were you calling Madeline Petty, Mr. Borders' lady friend, around midnight on May 6th?

Judge HASTINGS. To speak with William Borders.

Mr. BARON. And what gave you the idea that he would be there?

Judge HASTINGS. Because I thought that that's where he would be. And either he had given me the number at some point in time, or I got it from his house. Help me if you can because I'm sure you know that there was another time when I got the number from his mom.

Now, if I thought he was there, it was that at some point in time he told me that's where he would be. If that's probleming you, it's not probleming me.

Mr. BARON. Mr. Dredge called Ms. Petty around 11:30 that night.

Judge HASTINGS. Now, you know I don't know what William Dredge called William Borders about.

Mr. BARON. I'm just saying it shows a call to Petty around 11:30.

Judge HASTINGS. I don't know and I don't care.

Mr. ANDERSON. Mr. Chairman, may I object? Counsel is testifying from the chart, which is not in evidence, to events that could not be within this witness's knowledge. I don't mind him asking the questions of the judge, but this chart isn't in evidence, and he is testifying about things that the judge couldn't know.

The CHAIRMAN. The objection will be overruled. The phase we're in is cross-examination, and I think what counsel has represented so far at least is supported by evidence somewhere in the record. If the judge is not familiar with it, he can certainly make that point, as he just did.

Judge HASTINGS. Thanks, Mr. Chairman. I'm not familiar with any call that William Dredge made.

Mr. BARON. I'm not suggesting you're familiar with the call, but the fact of the call is documented, Judge, that Dredge called Petty on May 5th around 11:30 that night. That's in the record.

Judge HASTINGS. I believe that I sure would like to know what they talked about.

Mr. BARON. And it is also documented in the record that you called Madeline Petty around midnight that night; is that correct?

Judge HASTINGS. Mr. Baron, I don't even know on that particular evening whether I spoke with Ms. Petty. I've told you before that I didn't know her.

Mr. BARON. You called Madeline Petty at around midnight.

Judge HASTINGS. How long can we do this? I told you that I placed a call from Earle Wallo's house to Madeline Petty's house.

Mr. BARON. And we know that Mr. Borders was in contact with Mr. Dredge that day because he left that number——

Judge HASTINGS. I don't know——

Mr. BARON [continuing]. As a contact point—just hear me out——

Judge HASTINGS. I don't know that.

Mr. BARON. He left Dredge's number as the contact point for the airline to reach him while he was in Miami if they need to get hold of him. That's established by the record.

Judge HASTINGS. Sure.

Mr. BARON. And Dredge called around 11:30. Isn't it a fact, Judge, that you knew to try to reach Borders around midnight because you and Borders met that day and he told you that's where you could reach him?

Judge HASTINGS. No, that is not true, Mr. Baron.

Mr. BARON. Judge, turn to page 3088 of your testimony yesterday.

Judge HASTINGS. All right.

Mr. BARON. Now, Judge, just to refresh your recollection, that was with regard to the pay phone call of April 9th, 12:15 p.m., that is made from a pay phone some hundred or so feet down the hall from your chambers.

Judge HASTINGS. Yes.

Mr. BARON. Correct?

Judge HASTINGS. That's correct.

Mr. BARON. And your testimony, in a nutshell, was that you had no recollection of having made that call and didn't have the slightest idea why you would have used a pay phone. I believe that's your testimony.

Judge HASTINGS. I don't have a memory of having made the call, either then or now.

Senator PRYOR. Mr. Chairman, excuse me?

The CHAIRMAN. Yes, Senator Pryor.

Senator PRYOR. Is this yesterday's transcript?

Mr. BARON. That's correct.

Senator PRYOR. Thank you.

Mr. BARON. Now, Judge, let me try to put this one in context. Do you want to get your chart and take a look at that?

Judge HASTINGS. OK.

Mr. BARON. Now, look on the top part of the line, going up in the air. Look at April 9th.

Judge HASTINGS. April 9th.

Mr. BARON. At 12:15 p.m., it shows Miami courthouse pay phone to DC courthouse pay phone, charged to ALH. Do you see that?

Judge HASTINGS. I know it's here, but I—yes.

Mr. BARON. It's a yellow box.

Judge HASTINGS. Yes, I see that.

Mr. BARON. Now, Judge, isn't it a fact—now, that's all that you were asked about yesterday.

Judge HASTINGS. Yes.

Mr. BARON. I want to put that in context. Is it not a fact, Judge, that earlier that day there is a call from you to Borders leaving the messages, "At office between 12:00 and 1:00"?

Judge HASTINGS. I believe that that's a fact.

Mr. BARON. OK. Do you recall leaving that message?

Judge HASTINGS. Mr. Baron, there were a lot of telephone calls that were made in my life. The answer to your question is: I don't recall whether I left a message. If it was received and recorded by someone in Borders' office, there's no reason for me to deny that. But to say that I remember it, I can't say that. But I believe I made the call.

Mr. BARON. And you don't have any reason to believe that the telephones in your chambers weren't working on April 9th?

Judge HASTINGS. I don't have any such reason to believe that on that particular day, but there have been times when the phone wasn't working.

Mr. BARON. Judge, if I represent to you that the records for that day show that you made a long-distance call from your chambers to Orlando, does that suggest to you there was no problem with the phones that day?

Judge HASTINGS. Oh, no, at that particular time that would be the case. I don't want to quibble with you. I believe I made this call.

Mr. BARON. And would you agree with me, Judge, that a call from a pay phone to a pay phone, as this was, would have to be prearranged? You're not in the habit of just picking up a pay phone and calling a random pay phone number?

Judge HASTINGS. I believe that that's a logical assumption.

Mr. BARON. Now, Judge, given the fact that you had given Mr. Borders a message earlier advising him you'd be in your office between 12:00 and 1:00, isn't it a fact that he returned your call during that time span and that he told you to call him back at a certain pay phone and that you did so at 12:15 from a pay phone?

Judge HASTINGS. No, I don't have a memory of that. If it occurred, I don't doubt that it did.

Mr. BARON. My question is——

Judge HASTINGS. I'm telling you that I have no memory of it.

Mr. BARON. But you remember the name of the bellhop at the L'Enfant Plaza was Jerry, right?

Judge HASTINGS. His name was Jerry.

Mr. BARON. Right. And you had clam chowder that day?

Judge HASTINGS. I had clam chowder and sandwiches.

Mr. BARON. Incidentally, Judge, you testified yesterday that you thought Jesse McCrary had testified that Borders said he was coming to Miami on September 16th——

Judge HASTINGS. No, that is not what I said. I said——

Mr. BARON. Well, correct me if I'm wrong.

Judge HASTINGS [continuing]. That Jesse McCrary said that he may have heard Borders say he was coming to Florida, but that he did not hear him say anything about the Fontainebleau. And I believe if you go back and read either the IC testimony or Jesse McCrary's testimony at my trial, that's what you will find was the case.

Mr. BARON. Well, Judge, I represent to you that we have reviewed all the testimony that we know that Jesse McCrary has given, and there is no such testimony.

Judge HASTINGS. Mr. Chairman, if you will give me overnight, I'll bring it to him.

The CHAIRMAN. Judge, your counsel, of course, has the opportunity in redirect examination.

Judge HASTINGS. All right, sir.

The CHAIRMAN. We will not close this record until both parties have had a chance——

Judge HASTINGS. But, Mr. Chairman——

The CHAIRMAN. To put in all the evidence they——

Judge HASTINGS [continuing]. If Mr. Baron's going to make a representation like that, I was testifying from my perspective of this matter. And I do not wish to quarrel. I appreciate the Chair's ruling.

Mr. BARON. Judge Hastings, let me direct your attention back to the *Romano* case.

Judge HASTINGS. All right, sir.

Mr. BARON. Am I correct, sir, that there were essentially three charges—although there were 20-some counts, there were essentially three general kinds of charges. It was a racketeering case——

Judge HASTINGS. Racketeering——

Mr. BARON [continuing]. Tax fraud——

Judge HASTINGS. Fraud and mail fraud.

Mr. BARON. Tax fraud and mail fraud.

Judge HASTINGS. Right.

Mr. BARON. OK. And is it also fair to say that the core of the scheme was to cheat the New Jersey Teamsters Fund?

Judge HASTINGS. That was the core of the scheme.

Mr. BARON. OK. And wasn't it clear from you from the trial that the Romanos could easily gain access to large sums of cash?

Judge HASTINGS. There was no question in my mind but that if the Romanos had wanted to access to large sums of cash that they could.

Mr. BARON. And weren't there allegations made to you during the course of the trial that the Romanos had engaged in payoffs and kickbacks? It was made to you as a proffer?

Judge HASTINGS. Those were allegations that came up, and they were not admitted during the course of the trial. But I would have reason based on those allegations and the information that was brought to my attention that they might possibly be true.

Mr. BARON. Now, you conducted the forfeiture proceedings without a jury?

Judge HASTINGS. That is correct.

Mr. BARON. And you originally ordered the approximately $1.2 million in property forfeited; correct?

Judge HASTINGS. Yes, sir.

Mr. BARON. And one component of that $1.2 million was the restaurant?

Judge HASTINGS. The Sea Inn.

Mr. BARON. Right. And the other component was approximately $850,000 in cash that had allegedly been looted from the fund?

Judge HASTINGS. That's right.

Mr. BARON. Now, the cash component was in the form of a judgment. There wasn't a real seizure of suitcases full of cash; am I correct?

Judge HASTINGS. That is right.

Mr. BARON. And, in fact, the cash that they had taken couldn't be found; wasn't that——

Judge HASTINGS. That is correct.

Mr. BARON. And you ordered a forfeiture on the 4th in the nature of a judgment rather than an actual seizure of physical property?

Judge HASTINGS. That's right.

Mr. BARON. Other than with regard to the restaurant?

Judge HASTINGS. That's right.

Mr. BARON. Now, May 11, 1981, that was the date that the Romanos were originally scheduled to be sentenced; correct?

Judge HASTINGS. Yes, sir.

Mr. BARON. And it was continued by you; correct?

Judge HASTINGS. Yes, it was.

Mr. BARON. Now, Judge, isn't it a fact that in addition to the sentencing there were two motions pending? One was a motion for judgment of acquittal, and one was for a motion—notwithstanding—I think a motion for a new trial.

Judge HASTINGS. That is correct.

Mr. BARON. OK. Now, when you came out that day to rule, you went directly to the sentencing. You began by saying you were here to conduct the sentencing.

Judge HASTINGS. No, no. When I came out, I believe if we read the record, it will reflect that what I said was we were here for all pending matters, and I went directly to the sentencing.

Mr. BARON. But, Judge, isn't it a fact that logically what you really had to deal with first were the pending motions? Because if you granted——

Judge HASTINGS. I——

Mr. BARON. Let me finish my question.

Judge HASTINGS. I'm sorry.

Mr. BARON. If you granted either one of them, you didn't get to the sentencing; isn't that correct?

Judge HASTINGS. Yes, I think that a logical assumption that one might make.

Mr. BARON. But you didn't do that?

Judge HASTINGS. No, I did not.

Mr. BARON. The reason you didn't do it, Judge, is because you knew the sentencing ought to be attended to first because it was going to be continued?

Judge HASTINGS. There was no way for me to know that until Mr. Sonnett asked for the continuance. And so your logic fails at that point.

Mr. BARON. Isn't it a fact that that morning of the 11th you called Mr. Borders at approximately 6:27 a.m.?

Judge HASTINGS. How long was that call, Mr. Baron?

Mr. BARON. You called him. I don't know how long you talked to him. I'm just saying you called him.

Judge HASTINGS. No, you see, but——

Mr. ANDERSON. Mr. Chairman, I would object and ask that the record be put in front of the judge when we're talking about this. There's been some problems with one-minute calls or less, and we know what that is. If you're going to question him, I think you ought to confront him with the record.

The CHAIRMAN. We'll overrule the objection, allow counsel to go ahead and ask the questions he wishes to ask him in cross-examining. If on direct examination Judge Hastings' counsel wishes to bring out different facts that have been omitted, he can certainly do that. If the judge wishes to point them out in his answers, he can certainly do that.

Judge HASTINGS. Thank you, Mr. Chairman. Mr. Baron——

Mr. BARON. Excuse me, one second, please.

Judge HASTINGS. I'm sorry, sir.

Mr. BARON. I would also note, Mr. Chairman, the October 5th conversation which has been very central here lasts well less than a minute. So I don't think just because it's less than a minute it's not a significant event.

Judge HASTINGS. But it probably is significant to you that that's the only one of two that were recorded. All I'm saying to you is you're talking about the 6:57 call, whatever day that was. I don't deny that I called William Borders at any point that there may be a telephone connection between any location where I may have been to any location where he may have been. And, conversely, I'm not here to deny that any of that occurred at all. As to whether or not I spoke with him, it would be extremely difficult for me to have a total memory of every one of those events.

Mr. BARON. Well, my question to you is: Isn't it a fact that you called Mr. Borders that morning, May 11th, at 6:27 a.m.?

Judge HASTINGS. OK. If we're talking about one way, yes.

Mr. BARON. And isn't it a fact that at 6:28 a.m. you called Madeline Petty, his girlfriend?

Judge HASTINGS. Now, that would be the day that someone at William Borders' house told me that that's how he might be reached, and, yes, I have a memory of that.

Mr. BARON. And can you tell us, what was the purpose of those calls?

Judge HASTINGS. I don't remember.

Mr. BARON. On July 8th, you recall that you did sentence the Romanos?

Judge HASTINGS. Yes.

Mr. BARON. And at that time, you also reaffirmed your ruling on the May 4th forfeiture?

Judge HASTINGS. Yes.

Mr. BARON. Now, Judge, am I correct that as of July 8th Mr. Deichert had filed a memorandum?

Judge HASTINGS. That's correct.

Mr. BARON. Mr. Sonnett had filed a memorandum?

Judge HASTINGS. That's correct.

Mr. BARON. Your law clerk had given you a memorandum?

Judge HASTINGS. A handwritten draft kind of memorandum.

Mr. BARON. Right. And is it fair to say that at the hearing there was full argument by Messrs. Sonnett and Deichert about what

Martino was about and what the issues were and how you ought to decide this; is that correct?

Judge HASTINGS. That's not fair to say. They argued, but to say that it was full argument, I'm sure if you knew Neal and Jim, they could still be talking. But that——

Mr. BARON. This doesn't make it better, Judge. I'm just asking you whether it was a full argument.

Judge HASTINGS. I think they had an opportunity to explore the issues or at least to their satisfaction. But I have news for you. That was not the only thing that I was doing on that day.

Mr. BARON. Well, but at the time you were dealing with those issues, that was what you were focusing on, right?

Judge HASTINGS. Yes, and I also was in a hurry.

Mr. BARON. Now, it's correct, Judge, isn't it, that although the *Martino* opinion is approximately 50 or 52 pages long, there's a separate section in it that deals with forfeiture that runs about three pages?

Judge HASTINGS. That is correct.

Mr. BARON. And, in essence, it said that you had to reverse that judgment with regard to the $850,000——

Judge HASTINGS. That is correct.

Mr. BARON [continuing]. If you followed *Martino*?

Judge HASTINGS. That is correct.

Mr. BARON. Nevertheless, you affirmed your earlier forfeiture order of May 4th.

Judge HASTINGS. And that's what I thought I could do.

Mr. BARON. Now, the evidence is in the record, Judge, that on—this all occurred on July 8th.

Judge HASTINGS. All right, sir.

Mr. BARON. On July 7th, you called Borders.

Judge HASTINGS. I don't deny that I did.

Mr. BARON. And on July 9th you called Borders?

Judge HASTINGS. I don't deny that I did.

Mr. BARON. Now, Judge, is it your testimony that in July 1981 that the RICO forfeiture law was kind of new territory for you, that you really didn't understand the statute?

Judge HASTINGS. The RICO statute created a lot of controversy during that period of time, Alan, and the simple fact of the matter is that it's still creating a lot of consternation with reference to its understanding. I didn't steep myself then with reference to the RICO statute; and so that was my testimony as I understood it, and that's my testimony now.

Mr. BARON. Well, but recognizing the fact that it may have some interpretive difficulties, would you say that in July 1981 you had mastered the statute, that you pretty well knew what it was about?

Judge HASTINGS. No. I believe I had a grip, but I think you have to understand a little bit about me and perhaps a considerable number of other persons. That is that I can get the essence of something and go with it fairly well in the court setting, and some of that is pure instinct. And it isn't always complete information. I have not read the *Martino* decision even since that time. I said to Reid Weingarten and I will say to you, that's one I'd like to forget about. And I don't plan to read it ever.

Mr. BARON. Well, Judge, isn't it a fact that in July, at the NBA Convention, you gave a little seminar, a little talk on RICO?

Judge HASTINGS. About forfeiture and about the fact that the RICO statute was developing, and it wasn't in a seminar. We were in a room drinking and I was talking with fellows about the new development in the law that they should be paying attention to.

Mr. BARON. Judge, let me direct your attention to October 9th. Now, that was the day of the boat ride honoring Mr. Borders?

Judge HASTINGS. That is correct.

Mr. BARON. Is it fair to say a lot of people were coming to this event, some of them from Washington and some of them from out of town?

Judge HASTINGS. I knew that a lot were coming from out of town and I believe that there would be a lot of people there from Washington.

Mr. BARON. Now, Mr. Borders picked you up at the airport around 10:40?

Judge HASTINGS. Exactly.

Mr. BARON. OK. And you spent pretty much the rest of the morning with him, until he left from his law firm?

Judge HASTINGS. He left his office and I left his office on foot.

Mr. BARON. Now, after he picked you up, you went first to the hotel where you checked in?

Judge HASTINGS. Went first to the hotel, went up to the front desk and signed the register and went to the room.

Mr. BARON. OK. And you saw Hemphill Pride?

Judge HASTINGS. Eventually, shortly thereafter.

Mr. BARON. OK. And this was the time when the lady took your suit to go to the valet?

Judge HASTINGS. Yes, her name at that time was Barbara Cruel.

Mr. BARON. That is when you met Jerry, the bellboy?

Judge HASTINGS. Jerry went upstairs with us as well.

Mr. BARON. And after you met with Hemphill Pride, you decided not to go shopping with him and his family?

Judge HASTINGS. I told him, I told him I didn't feel well and that if I was going to go any place, I was going to go to a luggage store.

Mr. BARON. Now, you had some luggage that was broken or——

Judge HASTINGS. Yes, I did.

Mr. BARON. OK. Now, Mr. Borders took you first to the courthouse?

Judge HASTINGS. That's correct.

Mr. BARON. You spent a little time there?

Judge HASTINGS. A brief period of time, I don't remember minutes-wise, but it was long enough for us to walk, long enough for him to do whatever his business was. He had indicated that he had a trial that was scheduled to begin at 1:30.

Mr. BARON. Apparently he didn't try the case, because not long after that you went off to a liquor store to pick up some liquor for the party that night that was planned, right?

Judge HASTINGS. At the W&W Liquor Store.

Mr. BARON. OK. And then you went to Mr. Borders' office, is that correct?

Judge HASTINGS. That is correct.

Mr. BARON. OK. Now, Judge, you testified at one point, I believe it was yesterday, that when you learned of Borders' arrest, everything sort of flashed before your eyes and one of the things you found very suspicious was the fact that he had taken you to these places that morning.

Judge HASTINGS. Yes.

Mr. BARON. Can you explain that to me? I don't understand it.

Judge HASTINGS. Yes, because he didn't say that he was going to those places. When I left the hotel, I thought that he was going to be taking me directly to a luggage store, and in neither instance did he tell me, other than the fact that he was to have a trial, he didn't even say that he was going to the courthouse. When we got to where the courthouse was, he made an abrupt U-turn and parked right there, and therefore the circuitous route, in and of itself, just caused me to wonder why he didn't take me straight to a luggage store. You would have to know a little bit more about Bill Borders, I think, to know that that's not an unusual kind of thing, but at the very same time it was something that I thought about. What I thought about most was the fact that I was with him and that there was an allegation that something may have gone awry in my courtroom.

Mr. BARON. Now, Mr. Borders took a call from Frank, Frank Romano——

Judge HASTINGS. I have no idea who he took a call from. My memory is that when we walked in——

Mr. BARON. I don't mean to interrupt you, but I would really appreciate it if you would let me finish——

Mr. ANDERSON. Mr. Chairman, I would like him to let him finish his answer.

The CHAIRMAN. Counsel, when the witness is trying to respond to a question, we will allow him to complete his answer.

Mr. BARON. Mr. Chairman, the point I wanted to make is that the witness is not permitting me to finish my question.

The CHAIRMAN. I thought you had.

Mr. BARON. I had got half-way through it and the Judge jumped in. I think we ought to both kind of wait until we finish.

The CHAIRMAN. Why don't you ask the question and, when you are through, give us a signal and then, Judge, you can answer. [Laughter.]

Mr. BARON. I think that's fair.

Judge HASTINGS. Thank you, Mr. Chairman.

Mr. BARON. Mr. Borders, we know, took a call from a man who identified himself as Frank while he was at the law office and then he left.

Judge HASTINGS. I'm sorry, Alan. I believe that the evidence reflects that, but Borders and I had a conversation before he left and it was that he was running out of time and I asked him to point me in the direction of the luggage store and we walked out the back and he pointed me in the direction that I went walking.

Mr. BARON. And I believe your testimony was—it may have been yesterday or this morning—that you saw someone wearing a blazer and who had a gun who you believe was an FBI man?

Judge HASTINGS. Mr. Baron, I'm looking in retrospect and I believe that it was a member of an FBI team. Something that's not in

evidence here is—and it may help the Senators to understand what Bill Borders' law office looked like—and that is that there was just one entrance in and one entrance out, front and back, and it had a common wall on the other side and, therefore, I learned later that I was under surveillance and I just can't believe that, when I left the man's office on foot, that any surveillance officer did not see me. Now, I think and I thought that the person that I saw not at that time, but looking back on the events, I thought that person was a person that was on the surveillance team. And I said yesterday and I will repeat for you, I believe that most of the steps that I made that day were surveilled, and the reason for it I simply don't know why they didn't come forward and say certain things. But I can't believe I left Bill Borders' law office and an FBI didn't see me and they were surveilling me.

Mr. BARON. Are you suggesting, is that the reason that you bring it up, that the FBI intentionally did not follow you? Is that your point?

Judge HASTINGS. No, that is not my point. My point is that I believe that they did see me and intentionally did not reflect that they did.

Mr. BARON. OK. You returned to the L'Enfant Plaza at some point and had lunch, correct?

Judge HASTINGS. By myself, yes, I did, and before then I made two stops. I bought books—and I want my books back. I don't know where they are, but I want my books. In addition to that, I bought a man's bag and then I went back and I had lunch.

Mr. BARON. But what was the matter with your luggage? Would you elaborate on that for us?

Judge HASTINGS. Yes. One of the pieces was torn and the man bag itself was torn.

Mr. BARON. Now, a man's bag, could you describe what you are referring to?

Judge HASTINGS. Yes, it's a black thing with a long strap that you can hang over your shoulder.

Mr. BARON. Sort of almost like what I think of as a European style man's purse, that sort of thing?

Judge HASTINGS. Yes, a man's purse.

Mr. BARON. OK. And what was wrong with it?

Judge HASTINGS. It was about to come apart, the strap on it.

Mr. BARON. What had happened to it?

Judge HASTINGS. Worn over a period of time.

Mr. BARON. And you replaced it by buying another one that day?

Judge HASTINGS. I certainly did.

Mr. BARON. OK.

Judge HASTINGS. They didn't fix anything.

Mr. BARON. Just took your money?

Judge HASTINGS. No, it was a *quid pro quo.*

Mr. BARON. All right. You get back to the L'Enfant Plaza, eventually, and you had lunch, correct?

Judge HASTINGS. Yes, sir.

Mr. BARON. Room service?

Judge HASTINGS. Yes.

Mr. BARON. And Hemphill Pride joined you?

Judge HASTINGS. You know, you make such quick leaps—yes, he joined me, eventually.

Mr. BARON. OK. And he had lunch with you in the room?

Judge HASTINGS. He ordered the exact same thing that I had.

Mr. BARON. And then you went downstairs and had a few drinks.

Judge HASTINGS. We had two.

Mr. BARON. You had two drinks together downstairs.

Judge HASTINGS. That's correct.

Mr. BARON. OK. And then you returned to your room and Mr. Pride went back to his room, correct?

Judge HASTINGS. That is correct.

Mr. BARON. And then I believe you testified you got a call from Mr. Pride and he said he had to see you right away.

Judge HASTINGS. No, he didn't say he had to see me right away. He said there has been an emergency and come to my room.

Mr. BARON. OK. I'll accept that. You went up to his room?

Judge HASTINGS. Yes, I did. I met him in the hallway of the elevator bank, immediately after I stepped off the elevator he was there with his child.

Mr. BARON. And he told you what John Shorter had told him, correct?

Judge HASTINGS. He told me what he told me. Now, whether John Shorter told him what he said, he said that John Shorter had talked with him and then he related to me that Borders had been arrested and it had something to do in the nature of bribery or something to that effect in my courtroom and that—he gave me Agent Murphy's name and he said that they wanted—Shorter said to him that they wanted to talk with me——

Mr. BARON. They being the FBI?

Judge HASTINGS. The FBI—and he also said that "they"—and I never did know who "they" were, but he evidently was included in that number—thought that I should reach out and hire or have Ken Mundy represent me, and my statement to him was I didn't need Ken Mundy to represent me, I didn't know him, and that's where we were at that point.

Mr. BARON. You've testified that you went back to your room and made a couple of telephone calls, is that right?

Judge HASTINGS. I made two.

Mr. BARON. One to your mother——

Judge HASTINGS. One to my mother and one to Patricia Williams.

Mr. BARON. And they were charged to your hotel room, correct?

Judge HASTINGS. To the best of my recollection.

Mr. BARON. Well, you didn't put them on a credit card or call collect, did you?

Judge HASTINGS. Mr. Baron, I've gone over and over the telephone calls at the L'Enfant Plaza and there's a time during this eight-year period of time that Barbara Katzen and myself, for example, I called her from there and the two of us questioned our own sanity, if you will, at some point. It's very difficult. But the answer to your question is I don't believe I placed them on a credit card, I believe I charged them to my room and their failure to be there could only be accounted for because of either a failure in memory when I testified during the course of the trial or, under

the circumstances, whatever would cause numbers to be there, that somebody else had control over.

Mr. BARON. Now, these calls you claim you made from your hotel room, they would have been made between approximately 3:00 p.m. to 3:30 p.m., on the 9th?

Judge HASTINGS. You're not going to get me to say anything regarding the specific time. The time that I know that I can give you is the times that show up on the record, for example, when the food was ordered, I would think there was another record when Hemphill ordered the sandwiches and I ordered another bowl of soup. But as to the exact time, it's very difficult for me, not only now but it was difficult for me then to pinpoint the exact time.

Mr. BARON. Judge, I'm not trying to pinpoint an exact time. I'm just trying to get kind of a window of time. There has been testimony that you've heard that the agents got to Borders' office and got into Borders' office roughly at 2:45, and that shortly thereafter they spoke to Shorter and that's when they gave Shorter the message.

Judge HASTINGS. Yes, but, you see, you accept that as an absolute and I don't, but I believe that that has been the testimony and I don't buy into all of the time frame as it has been established, but I understand how logically one might assume that. For sake of us being able to move on, if you say it was sometime after 3:00 and near 3:30, of course.

Mr. BARON. Well, we know that by 4:37 you were at BWI Airport, because there is——

Judge HASTINGS. I believe—I believe that to be the case. Pardon me.

Mr. BARON. Now, wait.

Judge HASTINGS. All right.

Mr. BARON [continuing]. Because there is a documented telephone call from you to your mother from a pay phone at the airport, right?

Judge HASTINGS. That one I don't know about.

Mr. BARON. Then, would you agree with me, it would take approximately, give or take 5 or 10 minutes, an hour to get from the L'Enfant Plaza to the airport?

Judge HASTINGS. Yes. The FBI ran that same time period and everything again and came up with the figure that you have. It was particularly unusual on that day, but, sure, it takes an hour. I don't think it took that particular taxicab driver—and he wasn't speeding, the traffic was just unusually good on that day.

Mr. BARON. When I suggest that a reasonable window when these calls would have been made, if they were made, is between 3:00 and 3:30, roughly. It couldn't have been much different than that, could it?

Judge HASTINGS. I can't say that, because it could have been 10 of 3:00 and it could have been 3:15 as you are suggesting. I can't say that.

Mr. BARON. Now, you are aware that Mr. Pride has testified that he was with you from the time he first told you about the call until the time he left you in the lobby of the hotel. Is it your testimony to the committee that he's lying?

Judge HASTINGS. Mr. Baron, Senators, I wish that you would get, Mr. Baron, all of the testimony of Hemphill Pride and all of it on the subject of October 9th. I want to answer you yes, but it serves no useful purposes to cast aspersions. I don't believe Hemphill's memory of the events was as accurate as mine. If you look at the FBI 302 that was the very next day, what Mr. Pride said was that I went with him to the room, his room, and started to go to the telephone to call the FBI and apparently changed my mind. Now, I don't know where he fictionalized that, but that doesn't comport with his leaving and going with me directly to my room. And really, if you have six times that Hemphill has told this story, you would have six different versions, if you analyzed them, and that's almost tantamount to the eight versions that Dredge has given.

Mr. BARON. My question, Judge, are you telling us that Hemphill Pride is lying when he says that he accompanied you, from the time that he told you this——

Judge HASTINGS. It doesn't——

Mr. BARON. Let me finish my question, Judge.

Judge HASTINGS. I'm sorry, sir. All right.

Mr. BARON [continuing]. That he accompanied you, from the time he first told you about Shorter's message, to the time he left you in the lobby, are you testifying here that he's lying?

Judge HASTINGS. I'm saying that he was mistaken, and if you wish to characterize it as a lie, I don't believe that he was deliberating about the business of saying that, I just don't think that his memory was as good as you would like to have it be.

Mr. BARON. Now, you are also aware that the equipment which records long-distance calls charged to hotel rooms——

Judge HASTINGS. Sure.

Mr. BARON [continuing]. Has no record of any such calls being made. Are you telling us the machine is broken or manipulated or malfunctioning in some way?

Judge HASTINGS. Mr. Baron, in the real world—and I'm a little bit weary of this one—in the real world, since that time I've made it a personal point to ask persons in hotels I've stayed in—and there have been calls on my bill that were not made by me and there have been times I've made calls that were not on the bill. I've even had friends make records of periods of time when I called them that I didn't have the number on my bill. I don't know what happens at hotels, but all I know is I made calls and if I'm mistaken, I'll stand accused, but I didn't lie about it, if I was mistaken. But I can tell you this much, I believe you will find corroborative testimony from Barbara Katzen and from Carolyn Lewis and Barbara Whiting, and if you do find that corroborative testimony, I think you will learn that I did speak with them during the course of that day, and the only place that I spoke with them was from the L'Enfant Plaza, and there is no record of that.

Mr. BARON. Do you agree, Judge, there is no record of these calls?

Judge HASTINGS. I certainly agree with that.

Mr. BARON. You are also aware, Judge, that, at least according to the FBI's records, from approximately 2:50 p.m. to 4:00 p.m., Patricia Williams was being interviewed by the FBI, so she wasn't in a

position to have a conversation with you during the time you claim you made the call?

Judge HASTINGS. That's simply not the case. Mr. Williams left her office—the FBI has said that it was a client that called her, but I think what you will find is that there was another window—and I'm not trying to get any one of my lawyers in a witness posture, Mr. Baron, but let the record be truly reflective and hand it up to me, and I think you will learn that there was a call, and if you read Ms. Louck's 302, I think you will find that there was a call during the period of time of the interview of Ms. Williams. Now, that's the possibility.

I want to have it understood by you, I'm as capable of having made a mistake, but I think Professor Anderson had me point out to you that there was nothing for me to gain about talking about telephone calls. That was not the issue. The issue was me leaving and coming home and coming from Baltimore. Was that suspicious? Yes, in retrospect.

What else are we talking about? Those phone calls, to my way of thinking, are not germane to these proceedings.

Mr. BARON. Well, we will get into that, Judge.

The CHAIRMAN. Counsel, we have a burning desire by one of our committee members to ask a question at this point and, for that reason, I would——

Mr. BARON. I'm not in a position to object.

The CHAIRMAN [continuing]. I would just interrupt for that purpose. Senator Rudman had a question of the witness.

Senator RUDMAN. I just want to ask a very brief question. I've been following for three weeks now this testimony, and I just want to understand one thing: All of this questioning concerning whether the Judge made a call or didn't make a call at that time from the hotel, that whole thing, is that all directed to Article XIV? Is that your whole point, or is there some other point to this cross-examination?

Mr. BARON. There is an additional point to it.

Senator RUDMAN. Article XIV?

Mr. BARON. No, it's in addition to Article XIV.

Senator RUDMAN. Article XIV, of course, is an article which calls for the impeachment of the Judge based on a false statement, *i.e.*, that he made the calls which you say you have proof that he didn't. I understand that.

Mr. BARON. Right.

Senator RUDMAN. What else is the purpose of this cross-examination?

Mr. BARON. Because it is our position the calls to the Judge's mother and Patricia Williams never occurred and it reflects that his flight from Washington was guilty flight, and that goes to the whole question of whether he was involved in a conspiracy and whether he lied about his involvement in the conspiracy.

Senator RUDMAN. I'll tell you, that's pretty obscure to me, Mr. Baron, but I just want to understand what you are doing. Thank you.

Mr. BARON. Well, I will do my best.

The CHAIRMAN. You may proceed with the cross-examination.

Mr. BARON. Now, Judge, you are familiar with the letter that Patricia Williams wrote to you on October 14th, in which she stated to you that she felt pride and joy——

Judge HASTINGS. Was that October 14?

Mr. BARON. That's correct—with regard to you asking her to represent you——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. To offer you legal counsel?

Judge HASTINGS. Yes.

Mr. BARON. And in there she refers to the fact that you called her from Baltimore. She makes no mention of any calls from Washington, is that correct, sir?

Judge HASTINGS. That is correct.

Mr. BARON. Now, Judge, with regard to these calls to your mother and Patricia Williams that you claim you made from the hotel room in Washington, earlier today you were upset and outraged at the fact that the Government at your criminal trial came forward on rebuttal with the testimony with reference to Mr. Blocker, and you felt that you had been sandbagged and in some way you had been treated unfairly, surprised unfairly, correct?

Judge HASTINGS. Surprised.

Mr. BARON. OK. Judge, isn't it a fact that the first time you ever said that you had made these phone calls from your hotel room was in your criminal trial when you appeared as a witness?

Judge HASTINGS. On direct, and what else I said was that at that point in time—and I believe you would have, Mr. Baron—when I testified, I think you would have given me the telephone records signifying that there was no call. But please know this: I had done my own investigation. I had been given the bill—I went to the L'Enfant Plaza trying to get the bill. I didn't beat the FBI there, they beat me there and, under the circumstances, all I'm saying to you is there was just nothing for me to gain at all about talking about telephone calls. I understand your logic and I think that's a logical assumption and I can't quarrel with it, but I know what the facts are and I've tried to give you the facts to the best of my recollection and I've done it before.

Mr. BARON. Judge, all I'm saying is that the first time you raised the fact that you ever made these phone calls was when you were there as a defense witness and you were the last defense witness, were you not?

Judge HASTINGS. I was the last defense witness, it was on my direct when Ms. Williams asked me about it, I brought it up at that point in time. And what I'm telling you is that, when I finished my testimony, Mr. Weingarten or Mr. Richter gave us the whole big computer stuff until they had subpoenaed Mr. Blocker, brought him in in rebuttal and then Judge Gignoux gave us 15 minutes. Now, I just think that was a wee might unfair. It was not the most egregious event on earth and I was not so upset that we didn't go forward. We won the trial.

Mr. BARON. Now, Judge, your testimony was that you called your mother and she was hysterical because of what she had heard from reporters, is that correct?

Judge HASTINGS. You know, if I can help you, Mr. Baron, if I did or perhaps as Special Agent Mazzella did, confuse periods of time

when I may have spoken with my mother, if that occurred, I don't have a memory of it having occur and I really believe that I placed the calls from the hotel, and when I testified I testified as truthfully as I could and I was honest and I felt that that's where they were called from. But I know this, that at some point in time my mom was pretty hysterical. There are some other calls that you don't know my mother got and Reid Weingarten didn't know, either, during that day.

Mr. BARON. Judge, are you backing off from your testimony at your criminal trial——

Judge HASTINGS. I'm not backing——

Mr. BARON [continuing]. That you called your mother from the hotel, that she was hysterical and that's why you went home?

Judge HASTINGS. No, I'm not backing off of my testimony. What I'm saying to you is I could have made a mistake in my trial when I testified and I can make one here in this particular proceeding. Please know that I stand by my testimony and what it is is that I did not lie. If I made a mistake, it was an honest mistake.

Mr. BARON. Now, Judge, you testified that when you spoke to your mother on the phone, you could hear banging on the doors, the phone ringing, when you called her from the hotel. That was your testimony?

Judge HASTINGS. That's correct.

Mr. BARON. And when your mother testified, she indicated that the reporters were trying to get into the house, banging on the windows trying to come in——

Judge HASTINGS. At some point, I'm sure that that happened.

Mr. BARON. Her testimony was it was when the first time you called her.

Judge HASTINGS. That may very well be the case.

Mr. BARON. And she thought that you could even hear it.

Judge HASTINGS. Yes.

Mr. BARON. Can you answer this for me, Judge: Why would reporters be going to your home on a Friday afternoon, at approximately 3:00 or 3:30?

Judge HASTINGS. Alan, I don't believe you asked me that. [Laughter.]

I really don't. I don't want to be cute——

The CHAIRMAN. Judge, let me——

Judge HASTINGS. Excuse me, Mr. Chairman.

The CHAIRMAN. Judge, let me just interrupt long enough to advise the audience that we're going to try to conduct the hearing without a great deal of noise or reaction from the audience, and if the audience could help us with that, we would greatly appreciate it.

Go right ahead with your answer, Judge.

Judge HASTINGS. Thank you, Mr. Chairman.

Alan, the reason that I said that is reporters have exacting responsibilities and, again, I don't want to be in an accusatory posture, but when the FBI went to my office, Andy Rosenblatt from the Miami Herald was in my office and Andy Rosenblatt's newspaper article reports about the FBI coming out of my office with materials. He said boxes, it turned out it was not boxes, but that's yet another inaccuracy in reporting things.

But as early as that period of time, which comports with your window of time in this instance, Andy Rosenblatt knew about it, and it may surprise you, if you look at some radio logs here in Washington, DC, that there was a quick report regarding Borders' arrest right here in Washington, DC, so that's why reporters came to my house. I'm a fairly well-known fellow and this was going to be a big development and the magnitude of it was such that it would be reported, so that's why they came. And let me tell you something, they came in droves.

Mr. BARON. Well, Judge, if they were trying to reach you at around 3:00–3:30 on a Friday afternoon, wouldn't they first go to your chambers? Isn't that the logical place to figure a hard-working judge like you would be on a work day?

Judge HASTINGS. Well, I'm sure that there may have been reporters that went to my chambers. I'm sure that there were reporters that may have gone to the L'Enfant Plaza. I know, based on what people have said, I did not see it, that reporters went to the gala boat ride on that particular evening. But people were at my house and I don't have to wonder about who they are, I know who they were. Stephen D'Olivero, for example—we lived at that time in a compound that allowed that you had to go through a gate—he's a reporter with the Fort Lauderdale News, and somehow or another he got over the gate system, as did other people, and my mama was afraid, man, it's just that simple. I don't understand what you're talking about.

Mr. BARON. Well, Marilyn Carter testified that she was in your chambers the afternoon of October 9th and there weren't any reporters or others looking for you, there was one who wanted to look at the file.

Judge HASTINGS. Can we—since we use newspaper articles all the time, can we look at the October 11th newspaper article of Andy Rosenblatt and fine in there where he said that the FBI was in my office, he was there and he saw them take things from my office? Now, Marilyn may not have seen a reporter. I'm not telling you that reporters went to my office, I don't know that. I know they went to my house and I know they scared the living daylights out of my mama.

Mr. BARON. If a reporter had called your chambers on Friday afternoon of the 9th, wouldn't they have been told that you were out of town? That's all your staff knew, isn't that right?

Judge HASTINGS. And I believe that—Alan, if reporters didn't call my chambers, they didn't call anywhere. You don't know the Miami news hounds, they're pretty good. They called my chambers, I'm sure, and that may be what someone said to them, but they were all over wherever they could find me.

Mr. BARON. Now, Judge, you've testified that your apartment complex had an entrance gate and had a sign-in sheet.

Judge HASTINGS. A gate. A gate.

Mr. BARON. Like a security gate?

Judge HASTINGS. That's correct.

Mr. BARON. And they had a sign-in sheet back in 1981?

Judge HASTINGS. The guest of the resident did not have to sign in, but the people on the gate kept a log the best that they could.

Mr. BARON. And would it surprise you, Judge, to learn that reporters are reflected on that log for October 9th, but they are not signed in until around 8:00 p.m.?

Judge HASTINGS. Yes, it wouldn't surprise me, but the ones that went over the fence and the others that were crowded on the outside, they had everything but the helicopter like they had with Gary Hart. [Laughter.]

Mr. BARON. Now, Judge, you testified yesterday and you've testified here that you don't understand why these telephone calls are significant, but I'd like to explore that with you. You and Borders were indicted together, were you not?

Judge HASTINGS. Yes, we were.

Mr. BARON. But you were tried separately?

Judge HASTINGS. That is correct.

Mr. BARON. OK. And he was tried close to a year before you were?

Judge HASTINGS. That is correct.

Mr. BARON. And Borders was convicted, not of running a scam but of conspiring with you to obstruct justice, wasn't he?

Judge HASTINGS. That is correct, and I still don't believe that a person can be found guilty of conspiring by himself.

Mr. BARON. And you testified today that you monitored that trial, didn't you?

Judge HASTINGS. I testified today that Andre Mavrides, on my behalf, was there every opportunity that presented itself, along with his wife, who was a court reporter.

Mr. BARON. And I believe you got daily copy of the transcripts of that trial?

Judge HASTINGS. We got some of the daily copy.

Mr. BARON. OK. Isn't it a fact, Judge, that an important part of the Government's proof that you conspired with Borders was your flight from Washington?

Judge HASTINGS. I believe that that was an important part of the Government's proof.

Mr. BARON. And Borders was convicted in March 1982, wasn't he?

Judge HASTINGS. Yes, he was.

Mr. BARON. And isn't it a fact, Judge, that you realized then that you were going to have to come up with an innocent explanation for why you left Washington the way you did?

Judge HASTINGS. No, sir. I didn't have to come up with an innocent explanation. Any explanation that I gave would have resulted in innocence, for that's what I am, sir.

Mr. BARON. Well, you testified here that the first time you ever announced that you had made these calls to your mother and Patricia Williams was at your trial.

Judge HASTINGS. Yes. Are you suggesting——

Mr. BARON. Is that right?

Judge HASTINGS. Are you suggesting that that's the only thing during the course of the trial that was testified to about the first time by me or legions of witnesses that were there? Yes, that the first time I testified about that.

Mr. BARON. So, back on October 9th, when you were interviewed by the FBI agent, you made no mention of the fact——

Judge HASTINGS. I was not asked.

Mr. BARON. Let me finish my question, judge.

Judge HASTINGS. OK.

Mr. BARON [continuing]. You made no mention of the fact that the reason you had come home was because you had called your mother and all the reporters were assaulting your apartment?

Judge HASTINGS. I was not asked.

Mr. BARON. And you and Mr. Pride were in your hotel room, were you not?

Judge HASTINGS. We were in my hotel room on October 9th, in my room when we both had—he had a sandwich and soup and I had soup.

Mr. BARON. And after you came—I really apologize for not giving you another reference. I am talking now about after you have learned about the call from Shorter——

Judge HASTINGS. He came to my room.

Mr. BARON [continuing]. He came to your room, according to you, and you packed?

Judge HASTINGS. I didn't have to pack much, but I packed.

Mr. BARON. OK. You didn't check out of the hotel, did you?

Judge HASTINGS. No, I did not.

Mr. BARON. You didn't pay your room service bill?

Judge HASTINGS. No, I did not, but I gave Hemphill $100 which he denies me having given him, and I asked him to pay for my incidentals and to get my suit.

Mr. BARON. And you left the suit with the valet, but you didn't get it?

Judge HASTINGS. I asked him to get it, and I left it with the valet.

Mr. BARON. Now, you testified at your trial and you are testifying here that you gave Hemphill Pride $100 to take care of those charges?

Judge HASTINGS. A $100 bill.

Mr. BARON. And he's testified you didn't give him any money?

Judge HASTINGS. That's right.

Mr. BARON. Are you calling him a liar, that he stole $100 from you at this moment of crisis?

Judge HASTINGS. Oh, absolutely not. All I'm telling you is that I believe that he was mistaken, but I also told you that there is a person who is deceased that knows that Hemphill told him that I gave him the $100.

Mr. BARON. When did that individual die?

Judge HASTINGS. I don't remember when Sylvester died, but he died from asphyxiation, an automobile, during the wintertime, he went to sleep in the car and he died, and it was not suicide. There's another person, William Waterman, also had such a conversation. I think if you would have talked with Warren Dawson, you would find—and if you go back and ask Jesse McCrary, I think you would find that there was an awful lot of stuff going on about this suit, and Jesse ultimately got mad about it and said, "Well, I don't understand what you're all talking about, Al has the suit." So, I am telling you that, no, I don't believe Hemphill stole anything from me. I don't know why he did or said what he did, I really don't.

Mr. BARON. Well, if these people were around to corroborate the fact that you had given Hemphill that money, why didn't you call them as defense witnesses at your trial?

Judge HASTINGS. Well, one of them was my attorney, William Waterman, and the other one was Sylvester Goodson, who was available at my trial and we simply did not call him at that point in time. Alan, I gave Hemphill the money and his failure to remember it or not do what I asked him to do, suffice it to say that, either way you cut it, I left the room and I left from Baltimore and I think I've tried to describe the events as best I can recall them.

Mr. BARON. Now, you say you asked Hemphill to get your suit. Now, Hemphill is from South Carolina and you live in Florida. Why in the world——

Judge HASTINGS. And I asked——

Mr. BARON [continuing]. Would you ask him to get your suit?

Judge HASTINGS. Because he was asked to give it to someone who was going to be attending the gala that was from Florida, and I didn't specify anybody, I said give it to anybody from Florida. But how hard is it to get a suit from Washington to Florida?

Mr. BARON. Well, it's a lot easier to get it from Washington to Florida if the person who owns it picks it up and takes it with him to Florida, isn't that right?

Judge HASTINGS. Of course. Of course, and then I would have had to wait for it and I wanted to go home.

Mr. BARON. Right. Why didn't you stop at the front desk, check out, pay your room service bill and pick up your suit or make arrangements for them to send it?

Judge HASTINGS. I told you, I gave Hemphill the $100 bill and asked him to take care of my incidentals, and previously to that I think you've heard me testify that Borders had said that the room was going to be taken care of insofar as the bill itself, and I honestly thought that the man had a comp room, and there's nothing uncommon about that.

Mr. BARON. Now, you left Mr. Pride at the hotel. Now, he had offered to give you a ride to the airport and you turned it down.

Judge HASTINGS. That's correct.

Mr. BARON. Is that correct?

Judge HASTINGS. That is correct.

Mr. BARON. Judge, you testified—this is at page 1919 of your criminal trial, and I don't have that there——

Judge HASTINGS. All right, sir.

Mr. BARON. I just want to be sure that you still stand by that testimony today.

Judge HASTINGS. I stand by all of my testimony.

Mr. BARON. Well, let me read it to you, just to be sure.

Judge HASTINGS. Sure.

Mr. BARON. "It was then, especially in light of my mother's condition, which was my priority concern, and coupled with the fact that you"—when you were talking with Patricia Williams—"related to me what had transpired with you; and, third, my staff being interviewed by the FBI, I figured that Borders might very well have created some kind of problem for me, and my best bet was to go home, and I did." You stand by that testimony?

Judge HASTINGS. I stand by that and it has to be in context with other things that Hemphill said and that I said.

Mr. BARON. Judge, can we agree that National Airport is about a 10-minute cab ride from the L'Enfant Plaza?

Judge HASTINGS. We can agree.

Mr. BARON. Now, your car was parked at the Miami Airport, wasn't it?

Judge HASTINGS. That is correct.

Mr. BARON. And, Judge, can we agree—I think it is clear in the record—there was a nonstop flight from National to Miami leaving at 4:30 on October 9th, with 14 seats available?

Judge HASTINGS. That is correct.

Mr. BARON. Would you agree with me that that flight was made to order for your needs?

Judge HASTINGS. I would agree.

Mr. BARON. You didn't take that flight on October 9th?

Judge HASTINGS. No, I did not.

Mr. BARON. Instead, you took a $50 cab ride to BWI, which was a little over 30 miles from the L'Enfant Plaza?

Judge HASTINGS. That is correct.

Mr. BARON. OK. Now, instead of catching that 4:30 flight to Miami, where your car was parked, you ended up taking a 6:30 flight to Miami from BWI——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. And got off at Fort Lauderdale, where your car wasn't parked. You had to rent a car, right?

Judge HASTINGS. But that was my home, Fort Lauderdale——

Mr. BARON. I understand.

Judge HASTINGS [continuing]. And I did rent a car and I told you that I thought when I was headed in that direction that I could catch a 5:05 flight, it was my thought that it would carry me directly to Fort Lauderdale. I learned when I got to the Baltimore Airport that it went through Atlanta. But everything that you've said up to this point is absolutely correct.

Mr. BARON. And it's a fact, Judge, you didn't call either airport or any airline to check on the flights before you left that hotel?

Judge HASTINGS. I did not, I didn't call either airline, I made no reservation at all until such time as I arrived at the Baltimore Airport.

Mr. BARON. And you testified at your criminal trial that the reason you didn't think to go through National was because you thought there were no nonstops to Miami, correct?

Judge HASTINGS. Yes, and that's exactly what I thought. I had caught, Reid pointed out that I caught a July 20th or thereabouts flight that was the same number flight and that number was at a different time back in July, but it still comported with the opportunity to get there. I don't recall all of what went on, but if you look at below that flight on the chart that is in evidence, I think you will see that every one of those flights went through Atlanta until 10:00 p.m. Now, the 10:00 p.m. flight, Alan, I was very familiar with, because a lot of times when I was in Washington, that was the last flight out. But I wasn't as familiar with the 4:30 flight. I went to Baltimore because I wanted to get to Fort Lauderdale and I went to Fort Lauderdale because I wanted to get home.

Mr. BARON. But, Judge, the fact is two months earlier you had taken a nonstop flight from National to Miami in the afternoon?

Judge HASTINGS. I just said that.

Mr. BARON. Right. Now, you got into the cab and went to BWI without any flight reservation, is that correct?

Judge HASTINGS. That's correct.

Mr. BARON. And the fact is, Judge, you weren't in a hurry to leave Washington on the next available flight, you just wanted to get out of Washington as quickly and as deviously as you could, isn't that true?

Judge HASTINGS. That is a characterization that you place on it, and I also think that, looking in retrospect, that that's as very logical way of looking at the events of that particular day. But if you isolate or telescope on it, then you would be taking it out of the characterization that could be placed on the total day. Remember, Alan, I talked with the FBI. I didn't run from them and I have no reason to run from them. I said it a bit hostilely a moment ago, and I probably couldn't be on "the lam" all of this time. But on the day of October 9th, if I hadn't wanted the FBI to reach me, Alan, there's no way on earth that they would have been able to reach me, unless they were all over me, as I kind of like thought they were.

Mr. GEKAS. Mr. Chairman, could we ask for a recess to take advantage of the time that is now called for a vote?

The CHAIRMAN. The House managers need to go vote, is that correct?

Mr. GEKAS. Yes.

The CHAIRMAN. We will stand in recess for about 10 minutes, until the House managers can return.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Is Judge Hastings in the chamber?

Mr. CATZ. He will be here momentarily.

[Pause.]

The CHAIRMAN. You may proceed.

Judge HASTINGS. Thank you, Mr. Chairman. I'm sorry.

Mr. BARON. Judge, you testified this morning about the events of—and yesterday—about the events of October 9th. There was a part of it I don't recall you testifying about. Isn't it a fact that when you got to the airport, BWI, after the cab ride, you first called home at about 4:37 to your mother, is that correct?

Judge HASTINGS. That's correct.

Mr. BARON. And you spoke with her for approximately 4 minutes, according to the records.

Judge HASTINGS. I believe that's correct.

Mr. BARON. And then you called your mother again at 4:43 and spoke with her for about 3 minutes, is that correct?

Judge HASTINGS. I believe that's correct.

Mr. BARON. Now, you then called Patricia Williams at 5:06, but now you were at a different pay phone. You had moved to another phone, hadn't you?

Judge HASTINGS. That is correct.

Mr. BARON. And then, a minute later, she called you back, but by then you had moved to a third pay phone?

Judge HASTINGS. That is correct.

Mr. BARON. And you gave her the number of that third pay phone, so she would know where to reach you, right?

Judge HASTINGS. That's true.

Mr. BARON. OK. And you testified that the reason you moved to the third pay phone was, and I'm quoting you, "A gentleman was looking just like he was one of you all"—and I think you were talking to the prosecutor——

Judge HASTINGS. Yes, and I mean that, yes.

Mr. BARON [continuing]. "Breathing down my whole existence."

Judge HASTINGS. Yes.

Mr. BARON. Judge, what were you afraid of?

Judge HASTINGS. At that particular point in time?

Mr. BARON. Right.

Judge HASTINGS. I had a distinct desire to speak personally with Ms. Williams and try to gain as much information as I could, and, remember, by that time I had at least a little more information and it was not a question of being afraid. I told you before—I didn't tell you, I apologize to you, Alan—I said before that I thought often during that period of time that I was being listened to. Now, I may be suffering some paranoia, but I felt that way. And when I was talking with Patricia, I was particularly mindful that we may be being listened to and I didn't want that to be the case and that's the only reason the machinations with reference to the telephones.

Mr. BARON. You then told her to go out of her house to a pay phone and call you back at that number, correct?

Judge HASTINGS. There was an exchange—the only other time that I changed the phone, there really was a child that was making it very difficult for me to hear her. But I think, for clarification, that every one of those matters was, at least in my mind, an attempt to be able to talk to her personally, without being heard.

Mr. BARON. Now, because you told her to go out to a pay phone and call you back, that's why we have at 5:22, there's a slight gap there in time——

Judge HASTINGS. Yes, but in addition——

Mr. BARON. Judge, please, let me ask my questions.

Judge HASTINGS. I'm sorry, Alan, I thought you were finished.

Mr. BARON. I wasn't.

Judge HASTINGS. All right.

Mr. BARON. That's why at 5:22 we have a call from Patricia Williams at a phone booth to you at the third phone booth at BWI, and that's because you were afraid the phones were tapped?

Judge HASTINGS. You're missing a little bit of a link. At one point, Patricia had to get to where her daughter was, in an effort to pick her up and so advised me, so that's the case. But in each instance, in each instance, however many, if there were four, five, or six phone calls in that sequence, I had but one purpose in my mind overall and that was to speak with her privately.

Mr. BARON. And once she had left her home and gone to a phone booth, you had her call you back at a fourth phone booth at the airport.

Judge HASTINGS. I believe that is correct, and that was the exact same purpose.

Mr. BARON. Did you ever place a call to the FBI that day?

Judge HASTINGS. No, I never called the FBI that day.

Mr. BARON. And after you had done these calls, you booked space on a flight to Miami, with an intermediate stop in Fort Lauderdale, is that correct?

Judge HASTINGS. Yes.

Mr. BARON. Now, on your airline ticket—we can pull it out, but am I correct, Judge, that Fort Lauderdale is crossed out with ink or pen, and Miami's penned in, but in fact you did get off at Fort Lauderdale?

Judge HASTINGS. Yes.

Mr. BARON. Did you do that to your ticket?

Judge HASTINGS. No.

Mr. BARON. Do you know how that happened?

Judge HASTINGS. No, and I don't understand the significance of it at all. It was done, and if it was done, I would think it was done by the gate attendant or someone having to do with keeping the records of the airline. It wasn't done by me.

Mr. BARON. You then rented a car?

Judge HASTINGS. I rented a car.

Mr. BARON. And you had to do that, because your car was in Miami.

Judge HASTINGS. Right, and, you know, I just want to insert in there, here again, that information was provided by me. The FBI didn't make all of this discovery. I provided that information to them.

Mr. BARON. Now, you testified at your criminal trial in 1983 that you went home first from the airport, is that right?

Judge HASTINGS. Yes, I did.

Mr. BARON. Now, Agent Simmons interviewed you late that night of October 9th.

Judge HASTINGS. That is correct.

Mr. BARON. And didn't you tell him that you called home and went to Ms. Williams' house, without having stopped home first?

Judge HASTINGS. When Agent Simmons asked me—I don't think that's what the FBI 302 reflects, what you said is not the case. If I said that to him—and I believe I would need to see the 302, so we can put it in its proper context. Suffice to say, when I went home and I learned that my mother was with my uncle, I was satisfied, once I knew that he was there, he can handle it.

Mr. BARON. Judge, according to the FBI, at least, your mother told the FBI on October 9th she had no idea where you were and hadn't heard from you.

Judge HASTINGS. Sure.

Mr. BARON. Did you tell her to say that?

Judge HASTINGS. No, I did not tell my mother to say that.

Mr. BARON. Incidentally, Judge, with regard to this April 9th pay phone call, I understood you to testify yesterday, you said that you may have answered questions about this call on some other occasion. I looked it up in your testimony, you seem to have said that. Now, isn't it a fact that phone call didn't arise at your trial, because the prosecution didn't know about it——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. You didn't testify at the IC——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. And you didn't testify before the House. What I really want to know is what occasion were you referring to.

Judge HASTINGS. That may very be the case when I spoke, I was of the opinion that it was during my trial, that it was brought out. If you say that it was not, then the only occasion could be when it was learned by Professor Anderson or Patricia Williams or some of the other lawyers that were helping me out, I talked with them about it. But I don't have a distinct memory of that call.

Mr. BARON. OK. Judge, I'd like to turn your attention to certain telephone contacts between you and Mr. Borders, which are documented by records and which are in evidence. In a couple of instances, they are telephone contacts that are testified to, indeed by you, I believe.

Judge HASTINGS. Yes.

Mr. BARON. By our count, we have 21 telephone contacts from you and eight from Mr. Borders. Now, I would like to go through those with you.

Judge HASTINGS. All right, sir.

Mr. BARON. Now, first we have a call from you on February 20, 1981. Now, that's the day you held the second final hearing on the forfeiture matter in the *Romano* case, isn't that right?

Judge HASTINGS. Is this on the chronology? I accept your representation.

Mr. BARON. Well, February 20th, does that ring a bell, since that was the——

Judge HASTINGS. I accept your representation.

Mr. BARON. Now, what do you recall was the reason for your call to Mr. Borders on February 20th, if you recall?

Judge HASTINGS. There could have been but one reason for anyone of the—now, you identified 21 contacts and 8 or however many you say from Borders—the times that we talked, and I'm not talking about the messages, but the times that we talked, there could have been but a few things that we could have talked about, either the National Bar Association business, but, more paramount, helping Hemphill, and that's all that we ever talked about. We never talked, nor did I ever say to him anything at all ever about the *Romano* case.

Mr. BARON. Now, the next documented call was on April 9, and part of it was that message to call back, and then there's that pay phone contact. That was one day after the last brief was filed on the *Romano* forfeiture issue prior to your original May 4th order.

Judge HASTINGS. Yes.

Mr. BARON. Does that ring a bell? Does that seem true to you?

Judge HASTINGS. I can't say anything about it, but again, what we are doing is we're telescoping this as if my whole life was revolved around Williams Borders, and it was not. There were a lot of things that I did on that day and I don't have a distinct memory of them all

You know, Alan, a moment ago, for example, you pointed out about me knowing the name of the bellhop. Those events took place at that particular point in time, and it was easy to talk about events at that point in time. Phone calls came to me as cold, hard records, just the way that you're doing now, and there's no way for

me to have a distinct memory of each one of these calls in this chronology.

Now, I can tell you this, I never talked to Bill Borders about anything other than helping Hemphill, matters that he and I may have talked about, about the NBA, or anything else, our mothers or our friends or whatever, but not about the *Romano* order, and therefore we can do this all the way through, but that's going to be my answer to you.

Mr. BARON. Now, the next documented calls were on April 30th and May 1st. Now, isn't it a fact that these calls were a couple of days before you issued the May 4th forfeiture order in the *Romano* case? Isn't that right?

Judge HASTINGS. I believe that that's a fair representation of the events.

Mr. BARON. And I take it you don't recall the reason for your call to Mr. Borders on April 30th and May 1st?

Judge HASTINGS. No, sir.

Mr. BARON. Now, the next documented call was on the day the forfeiture order was issued, May 4th, I think it's the one marked "urgent." Do you have any recollection of the reason for your call to Mr. Borders on that day?

Judge HASTINGS. No. The calls that I remember, Mr. Baron, the calls having to do with the Key West period, the calls having to do with the September 10th, 11th, 12th, 13th, 14th period and the call May 23rd, when Borders called to say Happy Birthday to my mother, those are the calls that I have a memory of. The other calls, I don't deny having made and I'm sure that I did either make them or he made them to me, as it were.

Mr. BARON. On May 6th, you called Mr. Borders at Ms. Petty's, a little after midnight—I think we've already touched on that—and you have no recollection of making the call or recall why you made the call?

Judge HASTINGS. Say the fact that I must have wanted to talk with Bill Borders.

Mr. BARON. And the next time you called Ms. Petty's home, it was May 11th, at 6:28 in the morning. In fact, I think that was right after you had made a call to Borders' home.

Judge HASTINGS. That must be the call where I got the number of Madelyn Petty from someone, and I believe it was Mrs. Borders, to be able to call him at that number.

Mr. BARON. But you have no recollection of that conversation?

Judge HASTINGS. I do—I don't recall the conversation, but I recall the call.

Mr. BARON. Now, the toll records for Mr. Borders' home showed two calls to your home on the morning of May 29th. Do you recall why Mr. Borders' called you on May 29th?

Judge HASTINGS. No.

Mr. BARON. And the next documented calls—I think we've touched on these—from your home were July 7 and July 9, and we have already established that on July 8th is when you sentenced the Romanos and reaffirmed——

Judge HASTINGS. That's correct.

Mr. BARON [continuing]. Your May 4th forfeiture order.

Judge HASTINGS. That's correct.

Mr. BARON. You don't have any recollection of why you called Mr. Borders?

Judge HASTINGS. No.

Mr. BARON. OK. Now, the next documented call from your phone to Mr. Borders was on July 16th. Now, that call was just prior to your visit to Washington, DC, when you spent July 17th through 20th.

Judge HASTINGS. Yes.

Mr. BARON. Was that in connection with your coming up to Washington that weekend?

Judge HASTINGS. That's the weekend, I believe, that I was coming to the ABA meeting. Is that the weekend that you're talking about? It would have been in connection——

Mr. BARON. I think that's the meeting at the Mayflower.

Judge HASTINGS. It would have been in connection with that.

Mr. BARON. Now, Judge, on September 10th, about four hours after Dredge called Borders to tell him that the Romanos were ready to deal—we've had testimony to that effect——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. And they arranged the meeting for September 12th at the Miami Airport.

Judge HASTINGS. Yes.

Mr. BARON. You got a call from Mr. Borders' phone. Do you recall that call? It was around 5:30, 5:34.

Judge HASTINGS. As you and I speak, I don't have an independent memory of it. I don't deny that such a call was placed.

Mr. BARON. According to the records, you spoke with Mr. Borders for four minutes at 5:34, on September 10th.

Judge HASTINGS. No, according to the records—I don't want to quibble with you—a call was placed and you assumed that I talked with Mr. Borders. I believe that I talked with him, if the records reflect that.

Mr. BARON. OK. Now, Judge, the airline records that are in evidence reflect that, on the morning of September 11th, the next morning——

Judge HASTINGS. Right.

Mr. BARON [continuing]. Your secretary changed your reservations from a 6:50 p.m. flight to Washington, which would have gotten you in at roughly 9:00 o'clock——

Judge HASTINGS. Yes.

Mr. BARON [continuing]. To a 3:48 flight, which would have arrived around 6:00, 6:00 p.m.

Judge HASTINGS. Yes.

Mr. BARON. Do you recall having her make that change?

Judge HASTINGS. I'm sure I must have. I don't recall having done so, but I must have done that.

Mr. BARON. And wasn't that change as a result of your conversation with Mr. Borders at 5:34 the night before?

Judge HASTINGS. No, Alan, it was not.

Mr. BARON. Isn't it a fact that it was for that reason, because he wanted to meet with you at the airport on the 11th, now that he knew that the Romanos were ready to deal?

Judge HASTINGS. I think I told you the answer is no, but I think I told you before, if I ever wanted to meet with Bill Borders private-

ly, that was so easy to arrange. There was nothing along the lines of what you are suggesting.

Mr. BARON. But, Judge, the records establish that Borders was scheduled to leave that evening at 7:30.

Judge HASTINGS. That's correct.

Mr. BARON. Now, you learned that your 3:48 flight was delayed and you called his office twice to let him know that, isn't that right?

Judge HASTINGS. Yes, and I think in proper context you would also have to note that I called Shirley Ross twice and did the exact same thing. I had told both of them that I would be here and I told both of them that the plane was delayed.

Mr. BARON. In fact, Judge, you called Shirley Ross around midnight of the 10th to let her know that you were coming up, didn't you?

Judge HASTINGS. I'm not so certain about that, but I don't deny that I did.

Mr. BARON. You had dates set up for Shirley Ross?

Judge HASTINGS. Sure.

Mr. BARON. OK. Now, why did you have to tell Borders that your flight was delayed, why was that so important?

Judge HASTINGS. I had told him previous to that that I was coming and he was going to pick me up.

Mr. BARON. But, Judge, he had a flight leaving the airport at 7:30.

Judge HASTINGS. Yes.

Mr. BARON. You weren't coming in, even if your flight had been on time, until around 6:00.

Judge HASTINGS. Right.

Mr. BARON. Is it your testimony that he was going to pick you up at 6:00 o'clock and then he was going to go back to make his 7:30 flight?

Judge HASTINGS. That's—I had no way first of knowing that he was going to take a 7:30 flight, but that's my testimony, that he was going to pick me up and that's what he said and that's what I thought.

Mr. BARON. Well, you didn't arrive until around 8:00 o'clock, because of the delay, is that correct?

Judge HASTINGS. That is correct.

Mr. BARON. And the evidence is that Mr. Borders skipped his 7:30 flight and ended up taking a 9:35 flight that got him into Miami around, oh, after 1:00 o'clock in the morning, I believe.

Judge HASTINGS. That's correct.

Mr. BARON. It's still your testimony you didn't meet him at the airport?

Judge HASTINGS. I had no reason to meet him at the airport. When I got off the plane, he wasn't there. I did not see him, Mr. Baron.

Mr. BARON. Judge, you didn't check into your hotel until after 10:00 o'clock that night, although your flight got in around 8:00.

Judge HASTINGS. Yes.

Mr. BARON. And it is still your testimony you didn't meet Borders that night?

Judge HASTINGS. Not only that, unequivocally, it's my testimony that I did not meet Borders that night.

Mr. BARON. And you've testified that the reason you checked in late was, first, your luggage was delayed, and then the cab got lost and then Shirley Ross was late, right?

Judge HASTINGS. Well, she wasn't late, I was late.

Mr. BARON. But she was delayed being ready once you arrived?

Judge HASTINGS. I think she was a little bit disturbed by virtue of the continuing delays and she wasn't ready and she got ready and we went to the hotel.

Mr. BARON. Judge, you've heard the tape of the meeting between Mr. Borders and Mr. Rico playing Frank Romano, haven't you, on the 12th?

Judge HASTINGS. Yes.

Mr. BARON. Judge, would you agree with me that that morning Mr. Borders knew some things about the *Romano* case, he knew they had been sentenced to prison, it's reflected in the conversation?

Judge HASTINGS. I don't have this telephone call committed to memory. I will accept your representation.

Mr. BARON. And he knew that an appeal had been taken from the sentence?

Judge HASTINGS. I'll accept your representation.

Mr. BARON. And he knew that there had been a forfeiture of property, and he says, "I understand you lost some property." Do you remember him saying that?

Judge HASTINGS. I believe that's the case.

Mr. BARON. And he said something about "a substantial amount being returned." I think he uses the phrase "a substantial amount"——

Judge HASTINGS. I remember that.

Mr. BARON. And he asked for a bribe of $150,000, although it's written out, is the testimony. He doesn't say it, but it's written on a piece of paper.

Judge HASTINGS. And that's what Mr. Rico said.

Mr. BARON. Right. And it's your testimony that you never talked to Borders about the *Romano* case?

Judge HASTINGS. I never talked to Borders about the *Romano* case.

Mr. BARON. And would you agree that the evidence seems clear that Mr. Borders never came to your chambers to review the *Romano* case file?

Judge HASTINGS. I don't believe that he reviewed the *Romano* case file in my chambers.

Mr. BARON. Judge, I'm correct that only you, no law clerk, no secretary, nobody else can continue a sentencing that's scheduled before you, is that correct?

Judge HASTINGS. That's correct.

Mr. BARON. And only you can issue a forfeiture order in a case you're presiding over?

Judge HASTINGS. Every order that leaves my office can only be signed by me, if it's an order that I direct, and the only other persons that would likely be able to sign an order is any United States District Court Judge can sign an order, and we do pinch-hit for each

other when the occasion arises, but even there it's on the direction of the judge who has the primary responsibility and he or she may say that I'm out of the district, would you please sign that order for me, but in my office the buck stops with me.

Mr. BARON. It's got to be a judge.

Judge HASTINGS. That's right, it's got to be a judge.

Mr. BARON. And in your office, it's got to be you.

Judge HASTINGS. Most assuredly.

Mr. BARON. Would you agree with me, Judge, that only you had the power, you personally had the power to mitigate the sentences of the Romanos if they had dismissed their appeal and sought mitigation of sentence?

Judge HASTINGS. Only me or if, for some unknown reason, the case had been transferred to some other judge, but only a judge, and in the case of the *Romanos*, if it had come up within that period of time, it would only be me.

Mr. BARON. Judge, let's talk about September 12th, Saturday night.

Judge HASTINGS. All right.

Mr. BARON. It's around 10:00 p.m., and am I correct that——

Judge HASTINGS. Is that the Sheraton dinner business?

Mr. BARON. That's right.

Judge HASTINGS. All right.

Mr. BARON. Am I correct that in the room at the Sheraton there were two men, you and Jesse McCrary, and three women, Donna Mendez, Margaret Dabreau and Pearl Dabreau, correct?

Judge HASTINGS. Yes.

Mr. BARON. And nobody's had dinner?

Judge HASTINGS. No, but we had food and drinks.

Mr. BARON. And Borders came in—can we agree, it would be roughly 10:00, since it is established that his plane got into Baltimore at around 9:00 o'clock, it would take roughly an hour to get over there?

Judge HASTINGS. I'll accept that.

Mr. BARON. OK. Now, you've heard Donna Mendez testify here that the group was waiting for Mr. Borders.

Judge HASTINGS. I heard Donna say that.

Mr. BARON. But you still maintain it was as total surprise when he walked in the door?

Judge HASTINGS. There's no question about it. I also heard Pearl Dabreau, Margaret Dabreau and Jesse McCrary say distinctly that they didn't think that we were waiting for a William Borders, and I know that I was not waiting for him. Why Ms. Mendez says that, Mr. Baron, there is no way for me to tell.

Mr. BARON. Well, Pearl Dabreau testified before the Investigating Committee that she recalled the group was expecting someone, she didn't know who. Do you recall that?

Judge HASTINGS. Yes. I don't think that's the proper context and, Alan, I resent you doing that. You need to read it all to the Senators. That's not the context that it arose at the Investigating Committee, and I also found the thing about Jesse for the Chairman that I said I would, as well.

Mr. BARON. Judge, the airline records that are in evidence establish that Mr. Borders went to a tremendous effort to get back from

Florida and get back to Washington on the 12th, and ended up flying into Baltimore from Orlando and then getting over to Washington, I presume either by cab or by renting a car, I don't know.

Judge HASTINGS. Yes.

Mr. BARON. Judge, is it your testimony that he did all that on the off-chance that, on a Saturday night, around 10:00 o'clock, you all would still be sitting in your room, not having had dinner?

Judge HASTINGS. I don't know——

Mr. BARON. It wasn't prearranged?

Judge HASTINGS. I don't know what his motivation was, I don't know why he did what he did. All I know is he came there and, when he came there, I was not expecting him at that point in time. But Bill Borders has shown up at other times when you didn't expect him and he's also gone away at times when you thought he was there, and he has also said that he would be at a place when he was not there, and I don't know why Bill Borders has to bear all of the weight of being a person that doesn't necessarily follow through with every calendar event, any more than me or you.

Mr. BARON. Isn't it a fact that Margaret Dabreau was there as a date for William Borders? She was there in the room with two other women? She was the third woman in the room with two men until Borders got there?

Judge HASTINGS. Alan, that's a lie.

Mr. BARON. Well, Judge, you testified at your criminal trial, you were asked, "Do you know if Mr. Borders and Margaret left together?" I'm at page 2112. And your answer was, "It would be hard for me to say that I know that to be the case. I mean, we were having big fun. But I wouldn't doubt it at all, boys being boys, that Mr. Borders and Margaret hooked up in some kind of way. I have no problems with that."

That was your testimony.

Judge HASTINGS. That was my testimony.

Mr. BARON. Yes, sir.

Judge HASTINGS. Yes. I'm telling you that that was my testimony. Boys do hook up. I married a woman once that I hooked up with the first time I met her.

Mr. BARON. Judge, let's turn to September 16, 1981. That was the night of your dinner with Essie Thompson at the Fontainebleau?

Judge HASTINGS. Yes, sir.

Mr. BARON. OK. Judge, you don't dispute the fact that you made a reservation for two that evening; correct?

Judge HASTINGS. I don't dispute it at all.

Mr. BARON. And when you invited Essie Thompson the day before dinner, you didn't tell her that William Borders or anybody else was joining you; is that correct?

Judge HASTINGS. I didn't say one thing to her about anybody joining us.

Mr. BARON. Nor when you arrived at the Fontainebleau did you——

Judge HASTINGS. I did not say anything to her at that time——

Mr. BARON. Judge, you're doing it again.

Judge HASTINGS. I'm sorry. I thought you were through.

Mr. BARON. You're not letting me ask the questions. Okay.

When you arrived at the Fontainebleau, you didn't tell Essie Thompson you were being joined by William Borders or anybody else; isn't that right?

Judge HASTINGS. No, not at the time that we arrived.

Mr. BARON. Now, you say that you told the maitre d' and you said "some lady." I wasn't clear exactly who you were referring to, but it was someone other than the maitre d'.

Judge HASTINGS. However their setup is, there's a hostess and a maitre d', and I spoke with one or the other and advised them that I was expecting someone. And I identified the person.

Mr. BARON. But Essie Thompson has testified that she never heard you mention Borders that night. She would have been right with you, wouldn't she?

Judge HASTINGS. I believe that Essie Thompson was testifying what her recollection is. It doesn't mean that she was standing right there. Very occasionally, one might precede or follow another individual and have a conversation with the maitre d' and a person not be drawn to the attention of what's being said at that time.

Mr. BARON. Incidentally, Judge, did you ever produce the maitre d' or this lady at your trial to testify that you had told them about Borders?

Judge HASTINGS. Did the FBI?

Mr. BARON. My question was to you.

Judge HASTINGS. Yes, but I didn't have any responsibility to produce anybody. But I'll tell you what I did. I went all over the Fontainebleau trying to find the people, and I also used Phil Edgecomb as an investigator to try to gain that information, and I also used David Hellman as an investigator to try to gain that information. And I ultimately had to take pictures and everything to show that there were other restaurants in the Fontainebleau as well. The answer to your question, I didn't have any burden of proof, but I tried like the devil to find the maitre d'. I went back into the Poodle Lounge and tried to talk with the gentleman that I talked to in the Poodle Lounge as well. I did that myself.

Mr. BARON. Now, Judge, the Fontainebleau is a big hotel, isn't it?

Judge HASTINGS. Huge.

Mr. BARON. And despite that, you didn't have Borders paged that night, did you?

Judge HASTINGS. I did not have him paged, nor did I place any telephone call.

Mr. BARON. And it's also true that when you and Ms. Thompson were seated at a table for four, you didn't protest when two place settings were removed?

Judge HASTINGS. No, I didn't protest at all.

Mr. BARON. But, Judge, if you had told the maitre d' or the hostess as you were coming in that you were expecting other people, they wouldn't have removed those place settings, would they?

Judge HASTINGS. I can't say that that's the case. They removed the place settings. I made reservations for dinner for two people. They took them away, and they could bring them back.

It happens all of the time. Maybe not in your world, but it does in mine.

Mr. BARON. Well, after you'd been seated for some minutes, you got up from your table; isn't that right?

Judge HASTINGS. That's correct.

Mr. BARON. And, Judge, isn't it a fact you got up to take that walk in order to be seen by representatives of the Romanos?

Judge HASTINGS. That is not——

Mr. BARON. That's why you were there.

Judge HASTINGS. Excuse me. I'm sorry. You're through?

Mr. BARON. Your ball.

Judge HASTINGS. OK. That is not the case. Ms. Loucks and I went around on that.

Alan, I knew Thomas and Frank Romano. I mean visually. I lived with those people for a month. And to get up to walk around to either be seen or to see them, in all of your logic and reasoning—and a lot of it makes a lot of sense—I don't understand how you can't understand that if I was in a conspiracy with Bill Borders and I didn't see the Romanos, I would have been hunting me up some Bill Borders to say where were the Romanos. But now that's just my view of it. But I didn't get up for but one reason, and that was to look for Bill Borders, period.

Mr. BARON. But, Judge, would you agree with me the Romanos didn't have to be in that dining room? It just had to be somebody there who could report back to them that you had shown up. They just had to know you were there.

Judge HASTINGS. What did the conversation say? Did it say who was going to be there?

Mr. BARON. It said you were going to be there.

Judge HASTINGS. Exactly. Did it say anything about who would be doing the looking?

Mr. BARON. That's right.

Judge HASTINGS. Did it say anything about that? I'm talking about the Borders-Rico conversation.

Mr. BARON. That's correct, Judge. It doesn't say, so it did not have to be a Romano who was sitting in that dining room.

Judge HASTINGS. I agree with your logic. Can you agree with mine that I knew them and would have looked for them and would have said to Borders, if I was in a conspiracy with him, that, hey, you know, I didn't see these people. And I don't understand how you come to that conclusion without at least being fair to me to accept the fact that there's another conclusion that could be drawn.

Mr. BARON. Well, if you didn't get up to look for the Romanos or to be seen by the Romanos, I take it you got up to look for Mr. Borders?

Judge HASTINGS. I did. And when I came back to the table, I told Essie Thompson that I was looking for someone that I was expecting from DC. Those were my words.

Mr. BARON. She says, I think, some friend from DC.

Judge HASTINGS. Those were my words.

Mr. BARON. OK. Now, you looked for him in the Poodle Lounge?

Judge HASTINGS. I only went in the Poodle Lounge.

Mr. BARON. Well, why didn't you look for him in all the other eating establishments there, like the Steak House, the Under the

Trees Restaurant, La Favorita, the Gaslight, the coffee shop. Why didn't you check the——

Judge HASTINGS. You know them all now, and the FBI didn't, and I told the FBI about all the others. I had no reason to go any place else. He had said in the main dining room, and I thought that I was in the main dining room.

Mr. BARON. Now, Judge, you testified at your criminal trial and here that Borders asked you to join him at the Fontainebleau the previous weekend when you were in Washington, right, the 12th and 13th, remember that?

Judge HASTINGS. I'm pretty sure that he said that to me at some point during the previous weekend, and I'm also pretty sure that he said it to me telephonically again when I came back through Washington, DC, and spoke with him.

Mr. BARON. Now, Judge, the evidence is clear that on September 16th William Borders wasn't anywhere near the Fontainebleau Hotel. He was going to the Tommy Hearns-Sugar Ray Leonard fight.

Judge HASTINGS. That is correct.

Mr. BARON. The first one.

Judge HASTINGS. That is correct.

Mr. BARON. And you don't quarrel with Madeline Petty's testimony, which we put in as prior testimony, that establishes the plans for that trip were made as early as September 1st, she bought the tickets that early?

Judge HASTINGS. I don't quarrel with it at all. You quarrel with a lot of the plans that I made well in advance of some of the events, but I believe that it's clear that William Borders went to the Hearns-Leonard fight.

Mr. BARON. And you recall Mr. Pride's testimony that he saw Borders in Washington before the 16th and that he talked with Borders about the fight and the fact that Borders was going? Do you recall that testimony?

Judge HASTINGS. I believe that I do, Alan.

Mr. BARON. And even Mr. Rico knew that Borders was going to that Leonard-Hearns fight? It's on the tape. They talk about the fight a couple times, that he's going, and then he asks him about after he gets back, right?

Judge HASTINGS. Yes, but if your next point—and I don't want to anticipate you—is that I had to know, a fellow scamming me wouldn't tell me the events of what he is doing when he's taking advantage of my name.

Mr. BARON. A lot of people know about it, Judge. How could he take the chance you might not hear it from somebody else?

Judge HASTINGS. Two people know about it. You say that Rico knew about it, and you say that the other person that you identified knew about it. Why would I have to know? I don't know where Bill Borders goes all the time. Why should I?

Mr. BARON. Judge, on September 12th when Borders was setting up the bribery deal with Mr. Rico and there's a show of proof that he'll have you appear for dinner at a particular location and particular time, do you remember hearing that on the tape?

Judge HASTINGS. Sure.

Mr. BARON. Judge, how is it that William Borders knew on the morning of September 12th before seeing you that evening or the next day in Washington that you'd be available on Wednesday the 16th? I mean, Rico asked Borders, "Do you have to check and see with the judge?" And he said, "No. We can set the date and time and place right now."

Judge HASTINGS. I'm not understanding your question.

Mr. BARON. When Borders and Rico met on September 12th, part of the show of proof that you were in on the deal was that you would show up somewhere and have dinner at a given time and place; correct?

Judge HASTINGS. Yes.

Mr. BARON. In the course of that conversation, Rico asks—Borders proposes Wednesday, September 16th, and Rico says, "Well, don't you have to check? Do you want to check and get back to me?" He says, "No, that's not necessary. Wednesday, September 16th," and Rico names the Fontainebleau at 8:00 o'clock.

Judge HASTINGS. Right.

Mr. BARON. My question to you is: How could Borders know that you'd be available to do that on the 16th?

Judge HASTINGS. The only thing that I can tell you is what happened, and that is because he said to me that he would be there, and I would assume he thought that I would be there. That's all I can tell you.

Mr. BARON. And a week later on the 19th of September, three days after the Fontainebleau dinner, Borders meets again with Rico and gets that $25,000 down payment. That's all on tape, right?

Judge HASTINGS. That's on tape.

Mr. BARON. OK. And isn't it true that the September 9th meeting was held——

Judge HASTINGS. The 19th or 9th?

Mr. BARON. The 19th meeting, 19th.

Judge HASTINGS. Yes, you said 9th. I'm sorry.

Mr. BARON. I'm sorry. September 19th meeting was held for the down payment because you had showed on the 16th?

Judge HASTINGS. I don't have any way of knowing what Borders was doing, Alan.

Mr. BARON. Well, Judge, it's on the tape. I mean, that was supposed to be the sign that you were in, and as a result that you were in, the $25,000 got paid.

Judge HASTINGS. But, you see, you're making the side that you think is the most logical side. All I'm telling you is I didn't participate with the man in any conspiracy. And so it's for that reason that I can't deny what the facts are about what Borders did. I only know what I did not do.

Mr. BARON. But, Judge, the evidence is clear that when Borders flew back on the 18th of September from Vegas, from the fight——

Judge HASTINGS. Right.

Mr. BARON [continuing]. And gets to National Airport and just changes planes and flies down to Miami. Right?

Judge HASTINGS. Alan——

Mr. BARON. How did he know that you had arrived at the Fontainebleau as you had promised—as he had promised?

Judge HASTINGS. I don't have any way of knowing that.

Mr. BARON. Judge, isn't it true that Borders was sure that you would appear there as promised because you were part of the deal?

Judge HASTINGS. That's not true.

Mr. BARON. Now, Judge, it's also true that on September 20th or 21st—this is by your own testimony—one or two days after the $25,000 down payment was made, you spoke to Borders on the telephone. Do you remember testifying to that?

Judge HASTINGS. I do.

Mr. BARON. OK. Now, your testimony is that it dealt with Mr. Pride's coming through the District of Columbia and that you connected it with Mr. Pride staying at the Channel Inn. I wasn't absolutely clear on your testimony. Could you clarify that for me?

Judge HASTINGS. That may not be the exact period of time. All I know is that I talked with Borders during that particular period of time, and the reason that I spoke with him was the same reason that I spoke with him at any point in time during all of this brouhaha. And it was almost all of the time that the conversation would turn to Hemphill.

Mr. BARON. By the way, Judge, you've testified that the William Borders you knew—and you put on testimony to the effect that Borders was an upstanding leader of the bar, man of integrity, great reputation and all.

Judge HASTINGS. Yes, sir.

Mr. BARON. And yet, Judge, according to your own testimony at your trial—and, indeed, here—he asked you to sign a false affidavit, didn't he?

Judge HASTINGS. Yes, he did.

Mr. BARON. And that was in July, I believe your testimony was?

Judge HASTINGS. I don't remember the exact period of time, but it would have centered around, I believe, William Dredge. And the reason that I say that is he said for someone in Baltimore. And I categorically rejected that out of hand.

Mr. BARON. Didn't that change your opinion of Mr. Borders' integrity?

Judge HASTINGS. No. At that point in time, I didn't know where he was coming from, and I didn't place any great stock in it one way or the other.

Mr. BARON. Judge, there's been testimony that on October 2nd, 1981, at 3:11 Mr. Rico and Mr. Borders have a conversation—you've heard the tape—have a conversation about the order. Rico wants to know what's happening, and Borders says, "I'll check into it." Do you remember hearing that on the tape?

Judge HASTINGS. I remember that.

Mr. BARON. And then later that afternoon, a call is placed from Mr. Borders' office to your chambers trying to reach you, and then you remember that the receptionist says, "I'm sorry. He's gone for the day"?

Judge HASTINGS. I remember hearing that call.

Mr. BARON. What transactions were you engaged in with Mr. Borders that required him to contact you on October 2nd?

Judge HASTINGS. Same thing. The business having to do with pushing up letters on Hemphill's behalf with reference to his financial condition.

Mr. BARON. Well, Sunday morning, the 4th of October, we have a tape where Mr. Rico calls Borders, and Borders says, "I haven't gotten an answer because I haven't been able to talk to anybody." Do you remember hearing that?

Judge HASTINGS. Sure.

Mr. BARON. Isn't it a fact that you were the person that Borders wanted to talk to and hadn't been able to reach?

Judge HASTINGS. I don't know what was in Borders' mind, Mr. Baron. I can't tell you that. But, you know, again, telescoping is just so peculiar to me; because when they met on the 19th, my recollection is that the evidence is that they said that the order would be out on the 29th. Well, there was nothing to stop me from telling Jeffrey to do the order previous to that time, and it didn't come out on the 29th. And nobody places any stock on the fact that that requirement was not met.

Let me tell you something. If all of these things have to fall into place, people that are conspiring do things, it seems to me, pretty much according to Hoyle. And I find it anathema that you can place emphasis on the tail end of this thing without following the logic of my having not suggested that the order should be out previous to that time.

Mr. BARON. Judge, on the afternoon of October 4th, according to your testimony, Mr. Borders called, left a message at your home that had something to do with Hemp; correct?

Judge HASTINGS. That's what my mom said.

Mr. BARON. OK. And did you call him back?

Judge HASTINGS. I don't think I called him on that particular day. There was in my mind no great urgency. It was about the same thing, and the next day is the day that I drafted the letters that I did not send.

Mr. BARON. Well, your toll records don't show a call in response.

Judge HASTINGS. I'm saying I don't think I called him. But—I don't think I called him. I don't have any memory of calling him. But the mere fact that a toll record doesn't exist doesn't mean that I can't call somebody from somewhere else.

Now, I don't believe I called him.

Mr. BARON. But, Judge, didn't you call him by pay phone because you knew the code word for a discussion about the *Romano* case between you was a reference to Hemp?

Judge HASTINGS. No, sir. If I called him by pay phone on October 4th, then according to your logic, there would have been no need to make a call on October 5th.

Mr. BARON. Well, Judge, the next day is October 5th. We can agree on that, can't we?

Judge HASTINGS. Yes, sir.

Mr. BARON. By anybody's logic.

Judge HASTINGS. Yes.

Mr. BARON. And that morning, you told the law clerk, Mr. Miller, that you wanted the *Romano* order today; correct.

Judge HASTINGS. That's exactly what I said.

Mr. BARON. And it's a fact that Mr. Miller was sufficiently impressed with the urgency of your statement that he drove, I think he testified, 45 minutes to go home and work on it.

Judge HASTINGS. And he also testified that that's where the paperwork was.

Mr. BARON. Right. Now, you heard the recording of a telephone conversation of October 5th in which Borders says to Mr. Rico, "I've checked on the matter, and it hadn't gone out yet." Do you recall that?

Judge HASTINGS. I'm not certain about that. I recall another point in time about it went out yesterday morning, and it didn't go out yesterday morning.

Mr. BARON. It's a later call.

Judge HASTINGS. All right. I'll accept your representation.

Mr. BARON. Now, isn't it true that as of Sunday 4th the order had not gone out?

Judge HASTINGS. I didn't sign the order until October 6th.

Mr. BARON. And yet Borders says on the 5th to Rico, "That's been taken care of. Probably today or first thing in the morning. I want to give it a little time." Do you remember hearing that?

Judge HASTINGS. Yes.

Mr. BARON. Didn't he learn that from you?

Judge HASTINGS. Absolutely not.

Mr. BARON. You're the only one who can issue an order.

Judge HASTINGS. I'm the only one that can issue an order.

Mr. BARON. Now, Judge, you've testified that the reasons you instructed Miller to do the order that day was your concern that he was going to leave the job and not have it completed. It was a big matter, and you didn't want it held over, right?

Judge HASTINGS. I didn't want—not only that, but I didn't want any of Jeffrey's work left over, and I have testified to that effect. I was going to be away a lot, and Jeffrey was at liberty to leave, and I wanted it done. I had had an experience I have testified about and I believe is in in previous testimony where that happened, and I didn't want it to happen again.

Mr. BARON. Well, Judge——

Judge HASTINGS. But it was not only as it pertains to the *Romano* order. Jeffrey had more work than the *Romano* order.

Mr. BARON. Well, Judge, that reason for pressing Mr. Miller to finish the order doesn't explain why there was continued pressure to get the *Romano* order out even after Miller had finished his part of the job.

Judge HASTINGS. There was no pressure by me.

Mr. BARON. Well, you heard Marilyn Carter's testimony it was——

Judge HASTINGS. I didn't hear it.

Mr. BARON. Well, she's testified here——

Judge HASTINGS. I don't doubt that.

Mr. BARON. I'll tell you what she said.

Judge HASTINGS. All right.

Mr. BARON. She testified that on the 6th everyone was rushing to get the order done, and she felt pressured to get the order out because of you. She didn't quote you as saying it, but she said that you were putting pressure on everybody to get that order out today.

Judge HASTINGS. I'd have to see what Marilyn said or have heard what she said, and I accept your representation. All I can tell you

is what I did not do. After I spoke with Jeffrey, I didn't say another word to anybody in that office about that order. If Jeffrey perceived it as rush-up, as I'm sure he must have, then he was following his own perception of the need for it to be rushed. And under the circumstances, to my way of thinking, it was important to get it out. And I've already testified about it.

Mr. BARON. Judge, she quotes you as saying, "Sorry for the rush, but this must go out today."

Judge HASTINGS. If she said that I said that, I have no independent memory of having said so. I would not deny it at all, having said it, Alan.

Mr. BARON. There was no legal deadline regarding the issuance of the *Romano* order, was there?

Judge HASTINGS. There was no legal deadline.

Mr. BARON. And isn't it true that between July 8, 1981, when you affirmed your prior order of May 4th from the bench, and October 6th when the *Romano* order went out, you didn't get any further briefing or argument from counsel on it; is that right?

Judge HASTINGS. I don't believe that we did in the office.

Mr. BARON. And the order you issued on October 6, 1981, was inconsistent with your July 8th ruling from the bench, wasn't it? Isn't that true?

Judge HASTINGS. It was inconsistent with the words that I spoke.

Mr. BARON. And the words that you spoke were your ruling, weren't they?

Judge HASTINGS. That is correct.

Mr. BARON. OK. But, in fact, Judge, the substance of the October 6, 1981, order was absolutely consistent that the promise that William Borders made to Mr. Rico—that is, a substantial amount of property that had been forfeited would be returned; isn't that right?

Judge HASTINGS. From your point of view, you're absolutely correct.

Mr. BARON. Finally, Judge—not finally for all this, but this area—I want to direct your attention to the October 5th conversation between yourself and Mr. Borders. I'm going to ask you some more questions about it. I just want to focus on one part of it for a moment.

Judge HASTINGS. All right, sir.

Mr. BARON. I want to direct your attention to the end of that conversation. Maybe the easiest way—bear with me one second. We'll put the chart up.

[Pause.]

Mr. BARON. All right, Judge.

Judge HASTINGS. Yes, sir?

Mr. BARON. Turn 21 on that chart. It may be a little hard for you to see, although I suspect you know every word on there.

Judge HASTINGS. I can see it.

Mr. BARON. It says, "Alright"—this is you speaking—"Alright. I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning." Right?

Judge HASTINGS. Yes, sir.

Mr. BARON. OK. Now, the morning you're referring to is the next morning. You're speaking on October 5th. You're referring to October 6th; right?

Judge HASTINGS. I would think so.

Mr. BARON. Well, Judge, are you saying that when Borders on October 7th tells Mr. Rico that the *Romano* order went out yesterday morning—that is, the morning of October 6th——

Judge HASTINGS. Uh-huh.

Mr. BARON. That's the morning you said the Hemp letters would go out, the stuff would go out to Columbia, you're saying it had nothing to do with your conversation with Borders——

Judge HASTINGS. That's what I'm saying——

Mr. BARON [continuing]. On October 5th?

Judge HASTINGS. That's what I'm saying.

Mr. BARON. OK. Well, Judge, let's turn to that October 5th conversation between yourself and Borders. You say that was a conversation about letters for Hemp; right?

Judge HASTINGS. The only thing that that conversation dealt with at all, Alan, had to do with Borders' continuing request of me to assist Hemphill financially, and I guess what it was all about was because I was a judge, if I had written to people, maybe that would cause them to respond. And that's all that the conversation was about, period.

Mr. BARON. Now, the first thing you said to Mr. Borders after the greeting is, "I've drafted all those ah, ah, letters * * * for Hemp." Right?

Judge HASTINGS. That's correct.

Mr. BARON. What letters are you referring to?

Judge HASTINGS. The same letters that are in evidence.

Mr. BARON. The three handwritten sheets, both sides?

Judge HASTINGS. That is correct.

Mr. BARON. And then you said, "* * * and everything's OK. The only thing I was concerned" about "was, did you hear if, ah, hear from him after we talked?" Now, what are you referring to there?

Judge HASTINGS. Nothing but about Hemphill's financial condition. Bill seemed to have more information regarding that than did I, and I don't know the reason that Hemphill was not sharing certain information, if he was sharing any at all, with Bill. But the simple fact is that I had the impression that he was privy to information concerning Pride's financial condition, and that's all this is about. That's all the whole thing is about.

Mr. BARON. Well, Borders says, "See, I had, I talked to him and he, he wrote some things down for me." And you say, "I understand." What is it that you understand?

Judge HASTINGS. That's an affectation. I've said it before. I'm sure I've said it during the course of this testimony. But I, again, was only referring to, in my mind, the financial circumstances as it pertained to Hemphill.

Mr. BARON. And then Borders says, "And then I was supposed to go back and get some more things," to which you replied, "Alright. I understand."

Can you tell us, what is it that you now understand?

Judge HASTINGS. Same thing. Same thing. Nothing—the only thing the phone call was about had to do with his financial circum-

stances, and I think you know that I've said that Bill Borders asked me a lot about this particular situation.

Mr. BARON. Well, Judge, you said you understood it. And not only that, it resolved your problem. "Well then, there's no great big problem at all," is what you said.

Judge HASTINGS. Sure.

Mr. BARON. Can you tell us, what was the problem and why the fact that Borders says he's going to go back and get—got to go back and get some more things for Pride——

Judge HASTINGS. He was going——

Mr. BARON. Judge, you're not letting me finish.

Judge HASTINGS. I'm sorry.

Mr. BARON. Got to go back and get some more things from Pride. How did that solve your problem?

Judge HASTINGS. He was going to push up at some point in time if Hemphill had gone along with what Bill had hoped that I would go along with. Then he was going to give me numbers insofar as the amount was concerned that we would be putting in that particular matter.

If you'll recall, one of the letters was directed to Hemphill, to request of him his understanding with whether or not we could go forward in this particular manner, Alan.

Mr. BARON. Well, Judge, you've heard Hemphill Pride's testimony. He never wrote anything down for Borders, financial information or otherwise.

Judge HASTINGS. That's what he said, and I believe him.

Mr. BARON. And that he wasn't supposed to write down some more things that Borders was going to come back and get. You've heard him testify to that?

Judge HASTINGS. Yes, for whatever it's worth, I've heard his testimony.

Mr. BARON. Now, I believe your testimony was—well, let me ask you this: When did you decide that you weren't going to send out these letters?

Judge HASTINGS. Some time on the evening of the 5th I thought about it, and I had at some other point in time told Hemphill that I would not help along those very same lines. And it would have been on the night of the 5th that I made the decision that I wouldn't do it.

Mr. BARON. Judge, the October 5th conversation which took place the day before the *Romano* order issued, that was about letters for Hemp; right? I mean, that's what it's about?

Judge HASTINGS. You're talking about this conversation?

Mr. BARON. Correct.

Judge HASTINGS. That's all it was about.

Mr. BARON. And the message you received from Borders at your home a day earlier, I think we've also agreed that that also had—the message was it had something to do with Hemp?

Judge HASTINGS. That's all I can remember that my mom said.

Mr. BARON. And going back not quite two weeks earlier to September 20 and 21 when you spoke to Borders right after he received that $25,000 payment, your testimony is that also was Borders importuning you about Hemp; right?

Judge HASTINGS. Almost all of this chronologue would include at some point in time conversations about Hemphill. And so your answer would be correct.

Mr. BARON. Judge, isn't it a fact that you and Borders were using Hemphill Pride's situation in South Carolina as a code for discussing the Romano bribe?

Judge HASTINGS. I never had any code, Alan, with Bill Borders or any need to have any code.

Mr. BARON. Well, Judge, let's turn to your actions——

Judge HASTINGS. As a matter of fact, that would have been a pretty stupid code.

Mr. BARON. Turning to your actions on behalf of Mr. Pride, let's talk about these letters. You've testified you wrote the letters while you were on the bench trying the *Santorelli* case on October 5th; right?

Judge HASTINGS. Yes, sir.

Mr. BARON. Do you remember when during the day you wrote them?

Judge HASTINGS. No.

Mr. BARON. Some time during the trial?

Judge HASTINGS. Yes, I was busy all day that day, but I wrote them some time during the course of that day. I don't have a distinct memory as to when.

Mr. BARON. OK. At least part of your attention was on the Santorelli trial? I mean, you've got to pay some attention to what's going on in front of you.

Judge HASTINGS. I was affirmed.

Mr. BARON. Well, Judge, I don't mean to be a wise guy, but I'm just saying——

Judge HASTINGS. Well, I don't mean to be a wise guy, either——

Mr. BARON [continuing]. You have to pay some——

Judge HASTINGS [continuing]. If I hadn't been paying attention, I believe that the Eleventh Circuit Court of Appeals would have reversed that case. Of course, I was paying attention.

Mr. BARON. As of 5:12 that afternoon when you spoke to Mr. Borders, you were intending to send those letters out; isn't that right?

Judge HASTINGS. I had that——

Mr. BARON. You told him you'd send them out.

Judge HASTINGS. I had that in my mind.

Mr. BARON. OK. So it wasn't until later that evening at some point you decide after thinking it over you weren't going to do it?

Judge HASTINGS. Changed my mind.

Mr. BARON. Well, since you didn't change your mind until later that evening, why didn't you give your secretary the letters to type when you came off the bench on October 5th?

Judge HASTINGS. Because I didn't cause her to type them any more than I didn't perhaps other times. I had my own thoughts about it.

Mr. BARON. Well, Judge, at your criminal trial, you testified the following—I'm quoting from page 2249.

Judge HASTINGS. All right.

Mr. BARON. The question was put to you: "When you create rough drafts of the letters while you're on the bench or while you're sitting at your desk or wherever, do you customarily date

them?" That question was put. You gave this answer: "No. I customarily do not date them because in most instances I render them to my secretary for typing on the day that I do it."

Wasn't that your practice?

Judge HASTINGS. In most instances. And, you know, I could give you speculation, but if I came off the bench at 5:12, Betty would have been gone. Betty leaves at 5:00 o'clock most days, and it's conceivable that she was gone that day. I didn't give them to her, and I don't give her some other things until I'm ready for her to type them. So the answer to your question is most of the time I would have given them to her to type.

Mr. BARON. Well, Judge, when you look at these letters and you see how clean they are—I mean, there are no deletions, additions, cross-overs, anything—they'd have been very easy to type for her pretty quickly, wouldn't they, if you had given them to her?

Judge HASTINGS. Betty is a fast typist, and I believe that she could have pushed them up real quickly, provided that she was not doing anything else at that particular point in time.

Mr. BARON. But you didn't give them to your secretary. I think, according to you, you stuck them in your desk drawer; right?

Judge HASTINGS. That's just my best memory, which at that time I believe would be better than it is at this time.

Mr. BARON. Judge, you stated on the night of October 5th sometime you decided it was improper for you to send out those letters; right?

Judge HASTINGS. I don't remember whether it was 10:00 o'clock or 11:00 o'clock, you know, at dinner or what. But I didn't send them. And at some point, I made the decision not to.

Mr. BARON. OK. And wouldn't it be necessary at some point for you to tell William Borders that you had changed your mind?

Judge HASTINGS. And I intended to tell William Borders and Hemphill Pride that I was not going to do that and to get some better understanding between the two of them. And I knew that I would see them on October the 9th. I didn't bring anything with me, the letters or anything else, other than my thoughts on the matter. And before I could get the two of them in a position where I could talk with both of them, Bill Borders was arrested, and I came home. And that's the end of that.

Mr. BARON. Pride didn't know about the letters?

Judge HASTINGS. No, he testified that he did not, and Bill Borders and I were helping him. And, Alan, Bill Borders and I have helped Hemphill Pride so much without his knowledge, and so have a whole lot of other people. I mean, you know, it isn't as if it's isolated. Borders helped him here in Washington, DC, helped him to get a job. I helped him from time to time as best I could. And not only then, I was helping Hemphill from the time that we were in school and all the way through, even the project that he got himself in trouble in, I helped in that particular project with some limited legal work.

So it was not uncustomary, and I wouldn't have it be understood that it was all one way. He helped me as well.

Mr. BARON. Well, now, Judge, you've testified that Borders hounded you for months to do this?

Judge HASTINGS. Not months. It wasn't months. It was during this chronology.

Mr. BARON. Well, I think your testimony, Judge, was it started back in March; as soon as Hemphill got out of jail, he started beating on you.

Judge HASTINGS. If you—no, no. If you wish to characterize it that way, he had a central concern, and so did Hemphill have a central concern, and so did I. Two things: Try to help the guy get his life back in order, and the other thing is to try to help him get his license back.

Unfortunately for me, in large part, he accomplished that over my difficulties.

Mr. BARON. Well, Judge, is it fair to say, based on your own testimony, that over a period of months Borders had, as you said every time he called you, every time you spoke on the phone——

Judge HASTINGS. That's fair——

Mr. BARON [continuing]. In one way or another the Hemp issue came up.

Judge HASTINGS. That's fair.

Mr. BARON. Right? And that had gone on for months.

Judge HASTINGS. That's fair.

Mr. BARON. OK. And when you told him at 5:12 on October the 5th, I mean, that was the culmination of his lobbying of you, wasn't it? You're going to send the letters; right?

Judge HASTINGS. You're saying those things. I thought at that time that I would, and I decided that evening that I would not.

Mr. BARON. But he understood from his perspective, based on what you had told him——

Judge HASTINGS. I don't know what he understood.

Mr. BARON [continuing]. He now hears for the first time you're going to send the letters. Now, you may have changed your mind later, but at 5:12——

Judge HASTINGS. Sure, but I don't know what he understood. I know what I did and what I understood and what I thought that he was about at that point in time.

Mr. BARON. Now, you didn't call Borders that night to tell him, "Bill, I've changed my mind; I just can't do it," on the 5th?

Judge HASTINGS. No, I don't have any memory of calling him on that particular evening.

Mr. BARON. And you didn't call him on the 6th?

Judge HASTINGS. I don't have any memory of calling him on the 6th.

Mr. BARON. And the 7th?

Judge HASTINGS. Don't have any memory of calling him on the 7th.

Mr. BARON. Now, you called him on the 8th. We have a recorded conversation, but you didn't mention——

Judge HASTINGS. I was in Albany, Georgia, at that time, and I called him on the 8th.

Mr. BARON. But you didn't say anything about, "Bill, you know, I've changed my mind about those letters. I"——

Judge HASTINGS. I was going to see him the following day, and my great hope was that I would see he and Hemphill, and there's no question but that I would have but for the ensuing events.

Mr. BARON. Now, on October 9th, that morning, you spent a good bit of the morning alone with Mr. Borders, right, driving around and all that?

Judge HASTINGS. That is correct.

Mr. BARON. But you didn't tell him then?

Judge HASTINGS. No. I had in my mind to speak with both of them at the same time.

Mr. BARON. So for four days now, Borders believes those letters are out.

Judge HASTINGS. I don't know what Borders believes.

Mr. BARON. Well, that's what you told him. You were sending them out the next morning.

Judge HASTINGS. Fine. That's what I told him. I don't know what he believed.

Mr. BARON. Judge Hastings, isn't it a fact the reason you didn't mention the letters to Borders on October 6, 7, 8, 9 is because there weren't any such letters? During that October 5th conversation, you were talking about the bribery deal.

Judge HASTINGS. That is not a fact.

Mr. BARON. Now, Judge, let's talk about those letters. Pursuant to Rule 16, Criminal Rule 16, the parties are obligated to provide for each other any documentary evidence they intend to introduce in their case in chief at trial.

Judge HASTINGS. Yes.

Mr. BARON. Isn't that basically what the rule says?

Judge HASTINGS. Yes.

Mr. BARON. Now, under Rule 16, isn't each party required to provide that evidence of that type as soon as they determine it's going to be used during trial; isn't that right? They have an obligation under the rule to do that?

Judge HASTINGS. Yes.

Mr. BARON. And it's clear—I mean, it's beyond dispute, isn't it—that pursuant to Rule 16 in January 1981, within a month of your indictment, the Government produced the tapes that had been recorded pursuant to the wiretap, including the tape of the October 5th conversation; right?

Judge HASTINGS. That is correct.

Mr. BARON. So as early as January 1981, you knew, didn't you, that the issue of letters for Hemp was going to be a critical part of this case?

Judge HASTINGS. I didn't think it was going to be as critical as it has become at that point in time, Alan, but I knew that it was going to be a part of the case.

Mr. BARON. Judge, you testified back at trial, you were asked the question, "Did you know immediately upon hearing that tape"—we're talking about this one.

Judge HASTINGS. Yes.

Mr. BARON [continuing]. Which would have been within days of that indictment, whether or not there are letters in the case case was to be a critical issue?" And your answer was, "I did."

Judge HASTINGS. I don't doubt that that's what I said at the trial.

Mr. BARON. And yet on February 16, 1981, you did not—that's when you made your Rule 16 production.

Judge HASTINGS. That's when Joel Hirschhorn filed our inventory No. 1.

Mr. BARON. You didn't include the letters in your reciprocal discovery to the Government, did you?

Judge HASTINGS. They were not included.

Mr. BARON. OK.

The Chairman. Counsel, could you clarify the year you're talking about? I thought you said 1981.

Mr. BARON. I'm sorry. That is incorrect. This would be February 1983—I'm sorry, 1982. 1982.

You didn't include——

Judge HASTINGS. We both can make mistakes.

Mr. BARON. That's true, Judge.

You didn't include the letters in your reciprocal discovery to the Government, did you?

Judge HASTINGS. No.

Mr. BARON. OK. And you don't dispute, do you, that by that date you knew that those draft letters were going to be critical in the case?

Judge HASTINGS. I don't dispute that.

Mr. BARON. OK. And the day your counsel turned over your discovery to the Government on February 16th, there was no stay entered in that criminal case at that time?

Judge HASTINGS. Not on that particular day, I don't believe.

Mr. BARON. And, in fact, you never even showed those draft letters? Joel Hirschhorn testifies he never saw those draft letters.

Judge HASTINGS. Mr. Baron, Mr. Chairman, I've seen the erosion of a lot of principles, not by this committee, but over the years of this saga. One of the things that I hold that is very important to me is the attorney-client privilege. Now, I don't mind telling this committee anything at all about these events as truthfully as I can recall them. But I have a lot of difficulty in setting up a dispute between myself and one of the finest attorneys in America with whom I had a disagreement about how a trial ought proceed.

Now, I'm not going to, unless directed by the Chair, talk with Mr. Baron about my conversations with Mr. Hirschhorn any more than I'm not going to talk with him about factual matters—I will talk with him about those, but about the attorney-client privilege matters, I feel very strongly about that. And I'm not asking the Chair for anything other, and the Senators, than understanding about the principle being of critical import to people. I recognize the gravity of what we are here about. But what Mr. Baron is setting up, it seems to me, is that there is going to be a dispute between Mr. Hirschhorn and myself. And I don't want that to happen. I really don't. Joel did his job, and I did mine. And we had a difference of opinion, and that's the essence of it.

I've had differences of opinion even during these proceedings with some of my attorneys from time to time. That's where he's coming from, and I want the Chair to know that when I give my answers that that is a likelihood, and I think that it's a mistake.

Mr. BARON. Judge, I don't think any question I'm going to put to you is a matter of dispute. Indeed, it is stipulated in these proceedings that Joel Hirschhorn was never shown any letters, and that's all I asked you.

Judge HASTINGS. Well, if that's the limits that we're going to have, then I agree with you. And if it was stipulated to by myself, my attorneys, and your House managers, then it's an agreement that I can agree with you about.

Mr. BARON. OK. I believe you have testified that the reason you didn't show these letters to Mr. Hirschhorn—you claim they existed, and the reason you didn't show them to Hirschhorn was because I think you said you didn't trust him?

Judge HASTINGS. Well, you see, here, again, we're going to get into that ambit. When I was testifying during the trial, I believe that the use of that language was very strong. What transpired—and here, again, trying to avoid getting into direct conversations that I was having with one of my then four attorneys, I can assure you that what problemed me was Joel's and my disagreement about talking to the prosecution.

As I've said, I was an old trial lawyer, and I just believed in meeting the prosecutor in the courtroom. And Joel didn't believe that, and he spent a lot of time, albeit, I think, what he perceived to be in my best interest, discussing with Reid Weingarten matters that I just wanted him to don't do. I didn't want him talking to Weingarten.

My mama put it a different way. She said, "He keeps telling them things, and he ain't bring you nothing."

Mr. BARON. Just to summarize, Judge, it's stipulated you never showed—Joel Hirschhorn never saw any draft letters, and the——

Judge HASTINGS. Joel Hirschhorn never saw the letters.

Mr. BARON. Correct. And your testimony is that the reason you didn't show them to him was because you didn't trust him because he spoke to the prosecutors, and you didn't think that was appropriate?

Judge HASTINGS. During that particular time—and you need to pull up all of that testimony—I think that I was harsh in my testimony at my trial in using the term "not trusting" Joel. Judge Gignoux made me so mad, Alan, until I almost lost it about this particular issue, the same thing being the attorney-client privilege.

Now, you have, I believe, in your possession Joel Hirschhorn's memorandum with reference to this particular matter. And I think you will find on there that when we talk about letters, that Hirschhorn doesn't even make that a high priority. But I don't need to be in collisions with my lawyers in front of you. I will answer you anything you ask me regarding the facts of this matter.

Mr. BARON. Well, my question to you, Judge, is: What did the fact that you may not have trusted Mr. Hirschhorn, or whatever word you want to use, what did that have to do with your obligation under Rule 16 to turn over those drafts as part of the reciprocal discovery, given the fact that you recognized immediately that this was going to be a critical part of the case?

Judge HASTINGS. I know a lot about trials, Alan, and there is a lot of leverage. We wanted William Dredge real bad, and I don't care what that turkey said when he came in here. We wanted him at that trial, and Patricia would have crucified him at that trial. And I know that.

Now, under those circumstances, I have you to know that there were a lot of things. For example, this chart that you've utilized?

Reid Weingarten and those didn't produce that chart until the next discovery period, and they knew and they had it a long period of time. Not this one. It wasn't as elaborate as this one, but it was another one. And they didn't know about that. When we had the final discovery exchange, we exchanged all of the information that was ready for trial. The Government was not prejudiced at all by any action or inaction of mine.

And to give these Senators or anyone else the notion that there was a discovery violation, you know better and I know better, Reid knows better and Robert knows better, that there was no discovery violation by Patricia, Andrew, Joel, William Waterman, Stanley Preiser, Barbara Fleisher, Terence Anderson, Jay Hogan, Professor Blakey, and countless other people that were involved in representing me.

Were there discovery violations by the Government? You bet your bottom dollar there were. And there were egregious ones. And you know more about it than any of us in this room.

Mr. BARON. Well, Judge, the fact is you never produced these letters. They never saw the light of day until December of 1982.

Judge HASTINGS. And if you can demonstrate to the Senators any prejudice that obtained to the Government or any discovery violation—Edward Thaxter Gignoux was one of the best judges in this country in terms of handling the rules. And I can assure you, Alan, he was sent with the exacting purpose of ensuring that I had a fair trial as he perceived it. Under those circumstances, I want you to know that had I committed a discovery violation, Judge Gignoux would have been all over me, Patricia, and any others of those attorneys.

Find for the Senators any sanction by Judge Gignoux. Find for the Senators any request for a rule to show cause for failure to go forward with the discovery by Reid Weingarten or Robert Richter or anyone else in the Public Integrity Section in the executive department. You won't find that. At least be fair. At least be fair.

Mr. BARON. Well, Judge, I think you're misunderstanding the point. The issue isn't one of whether the Government was prejudiced. The issue is whether the documents were fraudulent because they didn't appear until December of 1982. I'm not here to defend the Department of Justice one way or the other.

Judge HASTINGS. Reid would have argued that they were fraudulent had I produced them and handed them to him in 1980 when none of this existed.

Mr. BARON. Now, Judge, I want to talk to you about your relationship with Hemphill Pride and his efforts to get reinstated. I'm correct, Judge, you didn't file any papers or appeals on Mr. Pride's behalf in connection——

Judge HASTINGS. No, I didn't. But I talked with—I'm sorry.

Mr. BARON. In connection with any proceedings involving his attempts to——

Judge HASTINGS. I filed nothing.

Mr. BARON [continuing]. Get his suspension lifted?

Judge HASTINGS. I filed nothing.

Mr. BARON. OK. And you didn't testify on his behalf before the South Carolina grievance committee?

Judge HASTINGS. I was not requested to.

Mr. BARON. Right. And when Hemphill wrote you a letter, did he not, when he was in prison, asking you for help in raising money so that he could pursue some post-conviction remedies, and you declined to solicit funds for him back then because you decided it was unethical? That was back in 1980, wasn't it?

Judge HASTINGS. That's correct.

Mr. BARON. He said, and I think I'm quoting accurately from his letter, "Solicit funds for me from our mutual friends to help me finance the appeal," and you turned him down.

Judge HASTINGS. That is correct.

Mr. BARON. Now, ultimately, the South Carolina Supreme Court did not disbar Mr. Pride. They only indefinitely suspended him; correct?

Judge HASTINGS. And he was elated about that, as was I and lots of other friends.

Mr. BARON. Did you discuss it?

Judge HASTINGS. At some point in time, I'm sure I did.

Mr. BARON. And didn't you discuss with him when it would be possible for him to get back into the practice of law?

Judge HASTINGS. He never said that. Alan, you know, I thought we dispelled that notion even for you with bringing Judge Perry here. I could have brought Herman Perry. I could have brought Ralph Stephenson. These are people that grew up on Oak Street with Hemphill Pride, and they will tell you that the man was consumed with getting his licenses back.

The answer to your question is he didn't say anything to me. But the proof about his insatiable desire to practice law again is that surreptitious telephone call that my used-to-be best friend made of his used-to-be best friend. That in and of itself suggests to me that the man would go to any lengths.

Now, he didn't tell me when he could get his license back, at the time that I thought he was trying to get them back and everybody that knew him knows that, that it was 100 percent what he was trying to do from the day he got out of prison until whichever time it was that the South Carolina bar restored his privilege.

Mr. BARON. Well, Judge, are you telling us that Hemphill Pride was consumed with being reinstated, and he never said to you, "I'm consumed with being reinstated, but I can't even apply for two years"?

Judge HASTINGS. His actions belied any argument about when. And also the word "indefinite" means indefinite.

Mr. BARON. The rule said two years before he could apply.

Judge HASTINGS. I don't know the South Carolina rules. I don't even like the South Carolina rules.

Mr. BARON. Now, Judge, you've testified concerning the phone calls to South Carolina.

Judge HASTINGS. Yes.

Mr. BARON. If I understand your testimony, you acknowledge that your testimony was not true, there were not calls to Hemphill Pride.

Judge HASTINGS. That is correct.

Mr. BARON. But that it was an error on your part.

Judge HASTINGS. It was an error.

Mr. BARON. OK. Now, you acted as your own counsel along with Patricia Williams; is that correct?

Judge HASTINGS. I co-counseled with Ms. Williams.

Mr. BARON. And you prepared the case for trial; you reviewed your exhibits.

Judge HASTINGS. [Shaking head yes.]

Mr. BARON. OK. Now, Judge, let me direct you to the testimony regarding Article XIII. That was the call that turned out to be a call to Dr. Chisholm. OK?

Judge HASTINGS. Yes, sir.

Mr. BARON. Judge, isn't it true that in your—you may be saying you made an error now, but in your testimony you didn't hesitate at all in identifying these calls as calls to Hemphill Pride?

Judge HASTINGS. I don't believe that I hesitated. I really—when I reviewed the phone calls and I saw the Columbia calls, I was kind of excited about it. I thought that they were the calls. You see, Hemphill had two jobs at some point after he got out of prison, and he also had a home number, and he also from time to time would either receive or make calls from his mother's number. And he also would make calls elsewhere that is his private business that I happen to know about. But the simple fact is that I thought that they were those calls to him or from him to me.

Mr. BARON. Well, in connection with your testimony regarding the call that turned out to be to Dr. Chisholm, do you recall testifying, "The number's a number where Hemphill Pride may have been working. I'm not certain if he was working there or not, but I have called that number myself."

Judge HASTINGS. Yes.

Mr. BARON. Do you remember saying that?

Judge HASTINGS. And I thought that was true.

Mr. BARON. And Articles X and XII relate to calls that turned out to be to Carolyn McIver; right?

Judge HASTINGS. I don't have a complete memory. I accept your representation, and the next Article, I would assume, would be the ones to Mrs. Williams.

Mr. BARON. Well, let's stay with the ones to Carolyn McIver first.

Judge HASTINGS. All right, sir.

Mr. BARON. She was a social friend of yours?

Judge HASTINGS. Yes.

Mr. BARON. Who lived in Columbia?

Judge HASTINGS. That is correct.

Mr. BARON. Indeed, am I correct that you saw her that Super Bowl weekend in 1982 when you came to meet in Jack Swerling's office?

Judge HASTINGS. That is correct. She picked me up from the airport, had dinner with she and her mother and stepfather, and she returned me to my hotel on that particular day.

Mr. BARON. Now, your testimony with regard to one of the two calls, you said, "I know for a fact that this particular call was placed to Hemphill Pride." Do you remember testifying that?

Judge HASTINGS. Yes.

Mr. BARON. And with the other call that turned out to be to Carolyn McIver, you said, "I spoke with Mr. Pride."

Judge HASTINGS. Yes.

Mr. BARON. OK. Now, there was one call that was for August the 2nd, and that call was an 18-minute call from Patricia Williams' apartment.

Judge HASTINGS. Right.

Mr. BARON. And do you remember your testimony about that?

Judge HASTINGS. It was her home. I think I remember that that call two was the one having to do with Judge Woodrow Lewis.

Mr. BARON. Well, it was an 18-minute call from Ms. Williams' apartment.

Judge HASTINGS. To Hemphill.

Mr. BARON. You said it was to Hemphill.

Judge HASTINGS. That's what I thought.

Mr. BARON. And, in fact, it turned out to be to Eleanor Golar-Williams, Ms. Williams'——

Judge HASTINGS. That is correct.

Mr. BARON [continuing]. Former mother-in-law; right?

Judge HASTINGS. That is correct.

Mr. BARON. Now, you testified that, "That call was to a place I know is the number of Hemphill Pride. It was an 18-minute call."

Judge HASTINGS. Yes.

Mr. BARON. And then the question was put, "Did you, in fact, speak with Hemphill Pride for 18 minutes on August the 2nd?" And your answer was, "Yes, I did."

Judge HASTINGS. Yes. And at the time, I thought that was true because what I want you to understand—and I believe if you go back and you find all of the testimony, you will find that Hemphill said that we spoke several times during that summer. And we did, Alan.

Now, where we spoke, I really have difficulty understanding how those got to be Articles of impeachment. I agreed that I made a mistake about identifying the telephone calls. You know and I know that I didn't get the telephone records that Hemphill had. But Hemphill has testified about a very long call that he and I had about his impending meeting with the Chief Justice of the Supreme Court. And I thought that that was the truth when I testified.

Mr. BARON. Now, Judge, that August the 2nd call, the telephone bill was handed to you by Patricia Williams.

Judge HASTINGS. Indeed, it was.

Mr. BARON. And you testified that you were the one who reviewed all those phone records, I believe you——

Judge HASTINGS. About a day-and-a-half before this particular matter.

Mr. BARON. And——

Judge HASTINGS. The trial, when I testified.

Mr. BARON. And Patricia Williams did not participate in that review; is that your—that was your testimony this morning——

Judge HASTINGS. During that period of time, Mr. Baron, in all due deference to Ms. Williams and any other female person, she was suffering dysmenorrhea.

Mr. BARON. Well, Judge, I'm looking at an excerpt from the testimony, and the questioner is Patricia Williams. And the question is put, "Judge, will you tell us about the first call I indicated with a

little check on the first page there?" Indicating that Patricia Williams put the check on the call.

Judge HASTINGS. You'll pardon me, Alan. I was distracted in my own mind, and I didn't hear your question. I apologize to you.

Mr. BARON. That's fine.

Judge HASTINGS. Yes.

Mr. BARON. In the questions that were put to you by Patricia Williams, the way she puts the question, she says that she's the one who checked off the calls on the records that she was asking you about.

Judge HASTINGS. I don't doubt but that that is the case, but she didn't until such time as I excitedly tried to awaken her and show her the numbers. And if she did some checking, doubtless she did. But she didn't go over those telephone numbers like I did, and I didn't go over them careful enough.

Mr. BARON. Now, Judge, Charlester Williams is a name that's come up a couple of times, and you've stated that you have no basis to believe that he did anything wrong or had any communications with Mr. Borders——

Judge HASTINGS. There's no question in my mind, Charlester is one of the finest young individuals and an excellent lawyer. His only tendency is he likes to move around the country and practice. But he can practice when he gets there. And I don't believe he told Bill Borders anything about the *Romano* order, and I don't believe he told anybody else about it.

Mr. BARON. Judge, isn't it a fact that you subpoenaed him as a defense witness in your criminal case and interviewed him and ultimately you didn't call him?

Judge HASTINGS. And the reason that he was subpoenaed, if you need to know, is that the likelihood is very strong that he had information that would have been germane to the order itself, and we didn't need it. It comported largely with what Jeffrey testified.

Mr. BARON. Judge, I want to talk about your post-October 9th contact with Mr. Borders.

Judge HASTINGS. Yes, sir.

Mr. BARON. Your lawyer has characterized Borders as Judas, betraying you by trading on your name.

Judge HASTINGS. Which one of my lawyers? Professor Anderson?

Mr. BARON. I believe he used the phrase.

Judge HASTINGS. He's entitled to his opinion.

Mr. BARON. You're aware that there is a documented call from your home—indeed, your phone—to Mr. Borders' home on October 12, 1981?

Judge HASTINGS. I made the call.

Mr. BARON. And your testimony is that it wasn't to Borders, but that it was to Mrs. Borders?

Judge HASTINGS. Definitely. How long was the call, Alan?

Mr. BARON. A couple of minutes.

Judge HASTINGS. Yes. I spoke with Mrs. Borders, and it was at the instance—you know, maybe some people don't have the same kind of feelings about things as does my mom. But my mom was reaching out mother to mother. It didn't have anything to do with whether or not there was any involvement in criminality with reference to me and Bill Borders. She felt pain. I'm sure my mom did

and has all these years. And I think she thought that so did Mrs. Borders, and she asked me to call and speak with her.

There was nothing for me to talk with Bill Borders about on October the 12th. I could have talked to him any time at such time as he had an attorney. I'm sure some of my attorneys talked with he and his attorneys. So there was nothing that needed to be said at all. I had already talked with the FBI and told them everything that we're here about, Alan. Everything.

Mr. BARON. Is your testimony that you called Mrs. Borders and spoke to her?

Judge HASTINGS. I placed the call.

Mr. BARON. For your mother?

Judge HASTINGS. That's correct. My mother never at any point in time, as I recall, said anything to Mrs. Borders. She didn't know Mrs. Borders.

Mr. BARON. That's right. She didn't know Mrs. Borders.

Judge HASTINGS. That's correct.

Mr. BARON. And your mother has her own telephone line, doesn't she? Separate bills?

Judge HASTINGS. Same house.

Mr. BARON. Separate bills? Separate lines?

Judge HASTINGS. Same house. I pay them both.

Mr. BARON. But they're separate lines. She has her own.

Judge HASTINGS. Sure. Separate lines. She has her own number.

Mr. BARON. Right.

Judge HASTINGS. No question. What do you mean? I had to go back in her bedroom on her phone to call Mrs. Borders? I called from a telephone.

Mr. BARON. The call is made on your line, and you say that it was made for your mother. Is that your testimony?

Judge HASTINGS. I'm telling you, my mom asked me to call Mrs. Borders. I called her.

Mr. BARON. Now, you go to NBA conventions?

Judge HASTINGS. Yes.

Mr. BARON. Pretty regularly?

Judge HASTINGS. Over the years I have. Because of the events, I have not gone as often as I did previous to these events.

Mr. BARON. Would it surprise you to learn that there's evidence that you and Mr. Borders at a fairly recent NBA convention were seen conversing amicably, having drinks together?

Judge HASTINGS. That would surprise me. I've heard someone say that at some West Coast meeting that Bill Borders and I were supposed to have been together and drinking amicably together. The last time that I remember seeing Bill Borders was at a New York convention in the Marquis Marriott, and I was getting on an elevator with Judge Charles Fleming from Cleveland, Ohio, and Judge Julius Hobson from Detroit, Michigan, and Mrs. Fleming. And we were getting on the elevator, and Borders was getting off the elevator. Everyone said hello to him, and he didn't say very much of anything. He did speak back, it seems to me, to either Julius or Charles. And I got on the elevator.

Now, the answer to your question is, yes, that would surprise me because I don't have any recollection of that happening.

Mr. BARON. Would it surprise you that Dudley Williams quotes you—Dudley Williams was Mr. Borders' former partner, was he not?

Judge HASTINGS. Sure.

Mr. BARON. And he was on your witness list, indeed, today—for these proceedings?

Judge HASTINGS. He was on my witness list here, and he was on my witness list in the original trial.

Mr. BARON. Would it surprise you that Dudley Williams quotes you as saying, "I'll always love Bill Borders. He's always been a friend to me"?

Judge HASTINGS. It wouldn't surprise me, but I would like to hear the context in which Dudley said it and the period of time that he's speaking of. And so perhaps we should have Dudley here to learn that.

Mr. BARON. The fact is, Judge, you owe Borders because he's protected you all these years. Indeed, he's protecting you——

Judge HASTINGS. I owe him——

Mr. BARON [continuing]. Right up to now.

Judge HASTINGS. Excuse me. I owe him?

Mr. BARON. That's correct.

Judge HASTINGS. No. Borders stole my name, Mr. Baron. I don't owe him anything.

Mr. BARON. I have nothing further.

The CHAIRMAN. At this point, why don't we take a short recess? The witness has been testifying for about an hour and 20 minutes, and we will hope to reconvene here in about 8 or 10 minutes.

Judge HASTINGS. Thank you, Mr. Chairman.

[Recess.]

The CHAIRMAN. The committee will reconvene.

Mr. Anderson, you're recognized for any redirect examination that you have.

REDIRECT EXAMINATION

Mr. ANDERSON. Thank you, Mr. Chairman.

Judge, a couple of quick points. Your attention was directed to a recorded conversation on September 12th between William Borders and Rico/Romano, as I think of him, and let me represent to you that, as I heard it, the deal had two steps: You were to have dinner at the Fontainebleau and then you were to issue an order by September 29th. You had dinner at the Fontainebleau, didn't you, Judge?

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Did you issue that order by September 29th?

Judge HASTINGS. No, sir.

Mr. ANDERSON. You told Mr. Miller to get it out on October 5th. How long did it take him to put it on your desk?

Judge HASTINGS. It took him until the next evening to get it on my desk.

Mr. ANDERSON. Is it your understanding that, at any time from September 12th to September 29th, that Jeff Miller could have done that, if you had given him the instruction?

Judge HASTINGS. Oh, indeed.

Mr. ANDERSON. So, if I understand it, sir, you concede that one step of Bill Borders' promised stage occurred as he predicted?

Judge HASTINGS. Yes.

Mr. ANDERSON. The other one did not?

Judge HASTINGS. No, it did not.

Mr. ANDERSON. Judge, since we are in the representing business here, let me direct, if you will accept my representations, to page 856 of the transcript of your trial, Mr. McCrary, on direct, asked the question, if the court reporter got it right, "Did he tell you"—referring to Borders—"that he might be in Florida the next week? He might have. I don't specifically recall—let me say, Borders said that kind of thing a number of times. I can remember one instance when he said, he just called and said I'll be at a football game in Tampa. Well, you know, what difference does that make to me?" Is that the kind of reference you had in mind when you were recalling Mr. McCrary's reference?

Judge HASTINGS. That is the kind of reference and, Professor Anderson, I don't mean to go out on a limb, but I also read somewhere else in some of Jesse's testimony something very similar. But when Mr. Baron, when I chose to correct him, that's what I had reference to.

Senator KERREY. Mr. Chairman, can we get a copy of that document?

Mr. ANDERSON. I'd be happy to, and I will, on this and others, because of the allusions to IC testimony, I will ask the committee to hold the record open for some documentary submissions in the morning on points that have been introduced there.

The CHAIRMAN. Would the clerk make a copy of this document for Senator Kerrey?

Mr. ANDERSON. Judge, Ms. Williams is your chamber secretary, am I correct?

Judge HASTINGS. Betty Williams, yes.

Mr. ANDERSON. What are her hours of work?

Judge HASTINGS. Betty comes in at 8:30 in the morning and she leaves at 5:00 in the evening.

Mr. ANDERSON. Judge, let me, to refresh your recollection, just show you a copy of what is Respondent's Exhibit 103 in evidence. It is a copy of one of your courtroom diaries for the period September 5th to October 5th. Would you look at the day of October 5th?

Judge HASTINGS. Yes, sir, I see it.

Mr. ANDERSON. What kind of case were you presiding over?

Judge HASTINGS. This particular case was the loansharking case of *United States of America* v. *Dominic Santorelli.*

Mr. ANDERSON. And according to the person who maintains your time record, how late did you sit?

Judge HASTINGS. I sat for 8 hours on that particular day, beginning at 9:30 in the morning, which would have put me into the evening.

Mr. ANDERSON. And at 5:00 o'clock or 5:05, where would Betty Williams have been?

Judge HASTINGS. My belief, Mr. Anderson, is that Betty would have been gone home. At that time, her son would have been much younger and she and her husband shared the responsibility of picking him up but again, that's in the nature of speculation. She stays

sometimes later, but it's a rare—I don't think, since Betty has worked with me, other than in her own capacity and trying to help me, I don't think she has stayed until 7:00 or 8:00 o'clock a single night that she has worked at all.

Mr. ANDERSON. Now, if we accept the FBI's timing, you made a call at 5:12 p.m. on the evening——

Judge HASTINGS. Yes.

Mr. ANDERSON [continuing]. Discussing the famous letters.

Judge HASTINGS. Yes.

Mr. ANDERSON. Where were the letters, the drafts, at that time?

Judge HASTINGS. To the best of my recollection, they would have been with me when I made the call, but I don't want to go on line saying I have a distinct memory of that, because at that time it didn't mean anything to me.

Mr. ANDERSON. Well, a lot of this is speculation at this stage, Judge. But at 5:12 p.m., if you had just come off the bench, in all probability, would Betty Williams have been there to give the letters to type?

Judge HASTINGS. I don't believe she would have. We don't have a check-in/check-out time system.

Mr. ANDERSON. Judge, the question was raised, at one point you talked about some books you bought on October 9th, and at another point there was some chat about a man's bag that you purchased.

Judge HASTINGS. Yes, sir.

Mr. ANDERSON. Where are those physical objects of evidence, as far as you know?

Judge HASTINGS. So far as I know, they are not in my possession. I don't know whether they are in the possession of the House managers or the Executive Department or the Eleventh Circuit Court of Appeals.

Mr. ANDERSON. When was the last time you saw them?

Judge HASTINGS. The last time I saw them was when they were introduced in evidence during the course of my trial, and if I stand corrected on that, it would only be that on the night that I was found not guilty, when I approached Judge Gignoux and Patricia approached him and asked if he would see to it that we had the matters turned back over, he said that he would prefer that we draft a written motion, and ultimately Patricia did. Among the things that did not come back to us was the man's bag or purse, as Alan has said, nor did I have my books.

I was saying it facetiously, but I really would like to get my books back and I'd like to get my new bag and my old bag back.

Mr. ANDERSON. Now, Judge, just so I'm clear, have you had possession of either of those objects since?

Judge HASTINGS. No, I don't believe I have, Mr. Anderson.

Mr. ANDERSON. Now, were they produced prior to the trial for such examination as the Government might care to make?

Judge HASTINGS. I'm pretty sure that in the discovery exchange, Mr. Richter and Mr. Weingarten had that opportunity.

Mr. ANDERSON. Now, Judge, if we were to examine in detail the transcript of your testimony or any testimony anywhere, are we likely to find some mistakes in it?

Judge HASTINGS. Yes.

Mr. ANDERSON. And would it be fair, as a comparison for the people who want to, in assessing that, in examining your testimony against the other record of the proceedings and see who makes the most mistakes testified? Are you confident that you are a good witness? Do you testify honestly?

Judge HASTINGS. I think so, but this isn't about quantification. I believe that the Senators and their aides are going to do just exactly what you have said, Professor Anderson. I don't think you can stack up mistakes on one side and mistakes on the other side. It's a search for truth and I think that, as I did in my trial, I've testified here to the very best of my recollection and as truthfully as I can, based on that recollection.

Mr. ANDERSON. Judge, you've overruled me before, but I will tell you, this is one lawyer who thinks the stack on the other side is going to be a lot higher.

Judge, let me ask you one final question—two final questions. I ask you again: You've been cross-examined by Mr. Baron, you've heard me. Did you testify truthfully, to the best of your knowledge in September, at your trial, in 1983?

Judge HASTINGS. At my trial in 1983 and at any event where anyone has asked me about these matters, I've tried to tell the truth to the best of my ability, and I believe that I did.

Mr. ANDERSON. And have you tried to do the same thing here?

Judge HASTINGS. Yes, I have.

Mr. ANDERSON. Thank you. No further questions.

The CHAIRMAN. Is there additional cross-examination?

Mr. BARON. No, sir. The only thing we would like to do, which I did not do previously, we would like to move the admission of House Exhibit 230, which Judge Hastings identified as the letter from Patricia Williams, dated October 14, 1981.

The CHAIRMAN. Is there objection?

Mr. ANDERSON. No.

The CHAIRMAN. It will be admitted.

[The document referred to was marked House Exhibit No. 230 and was received in evidence.]

Just to advise you, Judge, of the schedule, we will still plan to recess at 5:30. To advise all counsel of the schedule, we will ask some questions, the committee members will here, until that time and make some arrangements with regard to tomorrow's testimony.

Judge HASTINGS. Thank you, Mr. Chairman.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. I would like to ask you: You indicated, with regard to your knowledge of Hemphill Pride's cooperating with the Government in the preparation of your case. I think the phrase you used, you said you asked a person to "check him out."

Judge HASTINGS. Yes.

The CHAIRMAN. Who was that person, what do you mean, and what information did you get?

Judge HASTINGS. His name is William Larkins. He lives in Hallandale, Florida. He is a personal friend of mine and he is a personal friend of Mr. Pride's, and I asked him if he would visit with

Hemphill Pride and try to get a sense of whether or not he was a cooperating witness. Why——

The CHAIRMAN. When did this occur, if I can—when did you ask him to make this visit or——

Judge HASTINGS. Mr. Chairman, I believe I would have to go into the record to try to find the exact time, but Bill Larkins did go to Columbia, South Carolina, and spent at least two days with Hemphill, and I can find the exact time for you, but I have no memory of the exact time as you and I speak.

The CHAIRMAN. What did you intend for him to find out?

Judge HASTINGS. Well, at that time, what was happening is different members from the National Bar Association and other persons who were mutual friends of mine and Hemphill were saying that he was doing things that were for the Government and were against my interests and I was concerned about that. I didn't know what he was doing and I wanted to know whether or not he was, and that was going to cause me to be very concerned about any communication that I had with him, as I believe it has been reflected that I was very cautious in dealing with him.

The CHAIRMAN. When you talk about your concern that he would be a—I believe the phrase you used was "a cooperating witness"——

Judge HASTINGS. Yes.

The CHAIRMAN. He didn't really know anything about any of the major issues that had brought this set of allegations forward. I just don't know exactly what your concern was. In what respect did you fear he could cooperate?

Judge HASTINGS. My fear was that he would manufacture or help to manufacture something that would be harmful to me. Now, Mr. Chairman, what you've said is that he didn't know about the events. By that time, he had about as much information as anybody else could have had, simply by reading the newspapers and/or hearing others talk about the events. He did not know, nor did he previous to this situation, anything about what Borders and I were talking about in an effort to try to help him, to my knowledge now, and I really thought that he was telling Borders what his financial condition was. But what I had reference was to a fear that he would be involved in some manner in setting me up.

The CHAIRMAN. When you rode to the airport with him there in Columbia——

Judge HASTINGS. Yes, sir.

The CHAIRMAN [continuing]. Did he, in fact, try to engage you in a conversation about these letters that you were proposing to write? He testified to this committee, as I recall his testimony, that he brought that subject up and confronted you and asked what was all this business about letters for Hemp.

Judge HASTINGS. Mr. Chairman, that didn't occur. That simply did not occur. I was at that time really thinking that, not only did I think that he was in some manner doing something that would be harmful to me, but I really thought that Hemphill had on a body wire at that point in time. I didn't see one, I didn't pat him down, but you have to remember the way I went about trying to make sure that someone was present when I was with him and my complete notion of trying not to be with him alone.

I mean, if I wanted to be with him alone, I could have, but I went to pains to not do that. And it would seem to me that if I went to all those pains, far be it for me to be talking about something to Hemphill that was going to be inculpatory insofar as these events were concerned. Sir, that conversation didn't occur, it simply did not occur.

The CHAIRMAN. So, your testimony is that you, in that ride to the airport there in Columbia, you really didn't have any substantive conversation with him about anything?

Judge HASTINGS. I changed the conversation. When he asked me his statement to me, Mr. Chairman, was, "Blood, you're not telling me what's going on," or words to that effect and I cursed him and I rolled the window down, and the reason that I rolled the window down was to talk out of the window and I started talking about a filling station in front of us, but I didn't have any conversation with the man about anything substantive having to do with these events. I had had my conversation which I thought I was entitled to, and that is to get from him an interview regarding his appearance before the grand jury.

The CHAIRMAN. Let me ask a little about telephone calls, these pay phone calls which seem to be a major thread of the allegations. The testimony of Dr. Chisholm was that Bill Borders suggested to him that he would do well to go out and use some pay phones himself. Not only did Borders explain that when Chisholm called him, he would want to not have a substantive discussion before he had gone out to a pay phone and had a chance to call him back, but that in fact Borders had suggested to Chisholm that maybe he should use a pay phone sometimes, too, to keep their conversation secret. Did you ever have a suggestion made to you by Bill Borders that you communicate to him from a pay phone?

Judge HASTINGS. No, not to my memory, Mr. Chairman. And if the April 9th conversation falls within that ambit, I can't sit here and deny it, but he never said to me to go out to a telephone that I remember, and I don't recall, other than in times passing through Washington or in other places, that I may have used a telephone to talk with Bill Borders or other people.

The CHAIRMAN. These phone calls that occurred from the Baltimore-Washington Airport——

Judge HASTINGS. Yes, sir.

The CHAIRMAN [continuing]. Is it your testimony that the moving from phone booth to phone booth and having Patricia Williams call back at other pay phones, that that was to get away from people who were standing near you, perhaps eavesdropping, or was it your concern that her telephone was being tapped? I'm unclear.

Judge HASTINGS. In one instance, it had to do with my suspicion that the person was someone that was eavesdropping. In one other instance, it had to do with the fact that a child was crying loudly and I was having difficulty hearing. But the objective in the other two instances, Mr. Chairman, was to talk with her privately and to not be listened to surreptitiously, and so it was that I really did think that her telephone, my telephone, and the telephone in my chambers as well were being listened to and, Mr. Chairman, I still think that was the case.

The CHAIRMAN. What I am trying to get at is that evening, on the 9th of October, when you were making those calls from the Baltimore-Washington Airport, did you suggest to her that she go to a pay phone and call you back——

Judge HASTINGS. Yes.

The CHAIRMAN [continuing]. So that her conversation on her home phone would not in fact be wired?

Judge HASTINGS. The first situation allowed that she was going out anyway, but the changing of the telephones was still for that purpose, Mr. Chairman, to try to talk with her privately, there's no question about it.

The CHAIRMAN. Would you give me a little more information on this character affidavit that Borders requested you to sign?

Judge HASTINGS. Yes, he did not identify the individual, but I just believe now that it was William Dredge, because it was during that same time period that Dredge's difficulties were ongoing on Baltimore, and he asked me if I would prepare a character affidavit from someone from Florida, and I don't have a whole lot of memories of the conversation. I recall saying to him very quickly, no, and I didn't fuss with him about it and he didn't say another word to me about it at that point in time, and I never did that, sir.

The CHAIRMAN. Well, a character affidavit, there is not a form for a character affidavit?

Judge HASTINGS. No.

The CHAIRMAN. I assume that the only way you could do a character affidavit would be that you would affirm that you knew a person and would vouch for their character and——

Judge HASTINGS. I think that's what he was referencing.

The CHAIRMAN [continuing]. And he was suggesting that you should do that for someone you didn't know?

Judge HASTINGS. Yes, sir.

The CHAIRMAN. But did you inquire of him who the person was——

Judge HASTINGS. No, sir.

The CHAIRMAN [continuing]. And find out at the time—I mean I have trouble conjuring up how the subject would have come up. Did he make a general request to you, you know, that he had an acquaintance who you were not acquainted with that he would like you to do a character affidavit for?

Judge HASTINGS. Mr. Chairman, I don't have a memory of the total conversation, I just remember him asking me to do that and my denying or my saying to him that I would not.

The CHAIRMAN. In answer to the questions that the House managers put to you about how Bill Borders could have known that these various things were going on in the *Romano* case, is it your testimony that you have no theory about that, no idea how—there were a series of things that were occurring in that case that he had some knowledge of, and I'm just interested in any light you might shed on that from your point of view, as to how he might have obtained that information.

Judge HASTINGS. Well, certain things that are a matter of public record, regardless of where the records are kept, skilled persons might very well come to know, developing trends in a particular

area. The business with reference to the Romanos, it was not a secret that they were tried and convicted before me.

I don't know, Senator Bingaman, whether it would surprise you or other members of the committee or anyone else, but the key that I have or any other United States District Court judge has in the year 1981, in the old post office, old courthouse building, opened all of the judges' chambers, every one of them, and there are a lot of people that work at the Federal courthouse and, contrary to the views of some, it's not as secure in every aspect as people would like.

Now, there is something that is not before you, Senator, and that is that all of the judges of the Southern District of Florida, in the Miami Division, at one point during this same time period were really concerned about the possibility of information getting out of the United States District Courthouse, either by phone or otherwise, and a special person—I don't know who it was—came down from Washington, DC, and swept our offices, it was the first time, and I'm not certain, but I believe Marshal—I can't remember his name, but whoever the United States Marshal was at the time, one or two times I told him that I didn't want my office swept. But we even detected at that time that out of the old courthouse there was an area where intercepts could have been implanted, although none were found. So, that was a concern of judges.

What I am saying to you is, we operate in a trusting manner, but insofar as reviewing a file or overhearing people surreptitiously, I believe that that happens at the courthouse, I believe it did in 1981, and that would be the only theory that I have. All I know, Senator, is that I did not tell Bill Borders anything at all about the *Romano* case.

The CHAIRMAN. Thank you, Judge.

We are going to follow a 10-minute rule here and my 10 minutes are up on this first round.

Senator Specter?

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Judge Hastings, you have expressed yourself in a forceful way, eloquent way, sometimes passionate way, angry at the Chief Judge of the Eleventh Circuit, angry at some of the things that the FBI has done, angry at a number of situations, used the word "resent," and I can understand that. But I've never heard you say anything about a resentment against Mr. Borders. Why not?

Judge HASTINGS. I resent him, Senator, and that's because no one has asked me the way that you have. Alan just asked me a minute ago about it, and I told him he stole my name. There's nothing for me to do about getting bitter with anybody. The object I have is to try to get better. But if you put the question to me directly and as you are putting it, please know that I resent it highly, what has transpired here insofar as anything that he did.

The VICE CHAIRMAN. Judge Hastings, you've expressed yourself about other people. You called his mother, and I can understand his mother is not him. But even in the manner of expressing it as you just did, there isn't the passion in your voice, there isn't the strength, there isn't the outrage. I mean, after all, by your approach to this case, here's a longstanding friend, a trusted friend who has used you to secure $25,000 in cash and to have his hands

on another $125,000 in cash, on the representation that he can fix you, based upon a lot of association which a lot of people knew about, a trusted friend betrayed you, subjects you to a criminal prosecution to the Investigating Committee of the Eleventh Circuit, to an impeachment proceeding—where's your real resentment about this man?

Judge HASTINGS. I just expressed it to you and I'm sorry, Senator, if the fire in my belly is not commensurate with your attitude with reference to what it ought be. Please know this, that I've testified in two proceedings and I don't believe that anybody until you has asked me that question that way, and I just answered you as best I could. But please, sir, now that I don't like what happened to me. Having to go through this ordeal has been awesome, and I consider that Bill Borders is responsible for that and I don't know what else you would have me say. I'm not the kind of person who would kill somebody, but if I were I would have that kind of attitude.

The VICE CHAIRMAN. There is a great deal of circumstantial evidence here, Judge Hastings.

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN. Two kinds of evidence, you and I know it very well, direct evidence, where there is an eyewitness account. There are only two eyewitnesses to the allegations here, Judge Hastings and Mr. Borders. We are trying to get Mr. Borders. We've heard your testimony.

The circumstantial evidence may be reliable or it may not be, it depends upon the quality of the inferences, it depends upon the connections, it can be sufficient to convict a man of murder in the first degree or a woman and send them to the electric chair.

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN. There are a lot of telephone calls. I'm going to make available after the session ends today a sequence of calls that I will ask you about on the second round or the third round, because we only have ten minutes. But I want to focus now on what I consider to be the critical circumstantial evidence in the case, and that relates to the order that was sent out; factor 3 is special delivery, the questionmark, is it unusual; factor 2, the famous telephone conversation on October 5, 1981, which is said to be in code; and factor number 1, the events which occurred before those two events.

I'm going to state some facts that I understand to be facts, based upon the evidence, and if I'm incorrect, I would like you to correct me, because you can't be too careful.

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN. Fact 1: On October 2, Friday, at 3:11 in the afternoon, Mr. Rico calls Mr. Borders to find out why no order has gone out, and at 4:50, a little over an hour-and-a-half later, Mr. Borders places a call to your chambers.

On Sunday, two days later, October 4th, Mr. Rico again calls Mr. Borders to find out why no order has gone out, and that afternoon Mr. Borders called your home.

The next morning, October 5th, you tell Mr. Miller, your clerk, your law clerk, to finish the *Romano* order "that day." At 4:22, on

October 5th, Mr. Borders tells Mr. Rico that the *Romano* order had gone out "today or first thing in the morning."

Now, looking at that sequence of circumstances, would you have any explanation or perhaps really a submission or a contention or argument as to contradict or dissuade an inference which arises here, that as soon as Mr. Borders gets Mr. Rico's inquiries, two of them, he tries to reach you, and there's a gap with an inference that he has reached you sometime between October 4th and the morning of October 5th, where you tell Mr. Miller to finish the *Romano* order that day, and then later Mr. Borders tells Mr. Rico that it's an accomplished fact, the order is going to go out.

I ask you to address that because I think that's a big point in this case.

Judge HASTINGS. Senator, I've addressed it over and over again. The only thing that I talked with Bill Borders about at any point in time during the course of the chronology of events, as you put them and otherwise, when I spoke with him it would have been about Hemphill's situation as he and I understood it to be.

Now, then, with reference to times that he may have called and I wasn't available or he called and we didn't speak or he called and we did, that would have only been what we were talking about. We were not talking about the *Romano* order.

Now, I've tried to be as specific as I can regarding what you say. I don't have anything other than all of the events that I have testified to that would dispel any inference regarding those particular circumstances or any other, but I think that we have met them regularly with reference to me testifying about what I know I did and what I did not do. That's all I can say to you, Senator.

The VICE CHAIRMAN. Well, what is the urgency in Mr. Borders calling you on a Friday afternoon, 4:50 in the afternoon? We know, as a matter of human experience, Friday afternoon people are finished up, it takes something fairly urgent at 10 minutes of 5:00. What is the urgency that Mr. Borders calls you on a Sunday?

I know this is inferential and this is argumentative in a sense——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. And I realize that you can't do more than testify as to facts, but you are the Respondent, you are a highly skilled lawyer. That's a question. Then you have the telephone conversation which occurs at a very critical time in the afternoon, 5:12 in the afternoon, work day is over for a lot of people, it's not over for you and not over for most of us around here—it's past 5:12 now, and we were in last night until the middle of the night—but what's the urgency?

Here you have the representation you make that you're concerned about Mr. Hemphill, but you're with Borders for several days the following week and it's not brought up, and you've explained that you didn't bring it up deliberately until the two of you—the three of you were together. But then you're on hold and it's late in the afternoon and you call up and you have this conversation and you ask him, did you hear from him after we talked. Mr. Borders makes a response, he wrote some things down, and you understand. You were supposed to get back to more things and then you're going to send it off to Columbia in the morning. And

you say you wrote the letters that day and the letters are perfect—and we'll come back to that. But notwithstanding the urgency and you're making this call at 5:12 in the afternoon, you don't give the letters to your secretary to type.

What is the submission, what is your contention as to the very unfavorable inference which is raised from these matters in terms of all the urgency for Hemphill Pride, letters not sent, why?

Judge HASTINGS. Well, you have characterized it as urgent, Senator, and I don't know that I would characterize it that way. If you telescope on the events, then I think that's a proper characterization. But to suggest, for example, just to isolate on one facet of the multi-faceted recitation that you put forward, just isolate on one, a phone call at 5:12 in the evening, that is unusual to the Senator? I don't understand that, Senator. I call people at all times during the course of any day, but I don't wish to just isolate on that.

First off, I don't believe that in each instance that I spoke with Bill Borders. A gap, for example, you would think that if I was going to have to be in some kind of urgent posture with him, I would not have had to even call him if I had spoken with him about these particular events as you chronologue them that way, it would have been a given.

The reason it wasn't, Senator, is the facts, and I only have the facts, to ask you, really, respectfully to understand the other inferences. You started a moment ago by saying that you and I understand circumstantial evidence, and I believe we do, and, believe me, there is circumstantial evidence that carries the inference the other way and I think much of it has been what has been testified to here.

The VICE CHAIRMAN. Well, my time is up, Judge Hastings. I will respect, obviously, the 10-minute rule so others will have a chance. And as I say, I am going to have our counsel give your people the telephone calls, to see if there are others, so you can have a chance to focus on it. And when you say why do you focus on one call, I don't focus on one call, I focus on several calls connected with Mr. Rico. You're not responsible there, but your life is on the line, obviously, and we are very, very concerned about it and this is a very attentive committee.

Judge HASTINGS. I believe it.

The VICE CHAIRMAN. And what I want to ask you about is the very crux of the issue as I see it——

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN [continuing]. To give you every opportunity to come to grips with the key issues that are at least in my mind, and to give me your best response——

Judge HASTINGS. Thank you, sir.

The VICE CHAIRMAN [continuing]. And we will return to it.

Judge HASTINGS. All right, sir.

The CHAIRMAN. Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

Judge Hastings, just following up on one of the questions you were just asked, this goes a little bit to the phone calls. Tell me what your normal—what is your normal day like as a judge? You've testified that it's a very busy day. Just kind of give a normal day. For example, how far do you live from the courthouse?

Judge HASTINGS. At one point in time and during——

Senator LEAHY. During this time.

Judge HASTINGS. During this time, I lived in Lauderhill, Florida, which is a little under 24 miles to the Federal courthouse.

Senator LEAHY. How long did that take you to drive?

Judge HASTINGS. On a good day, Senator, it would be about 45 to 50 minutes; on a bad day, it could run easily—you know, accidents or rain or what have you—it could run more than that, but generally about an hour, sir, both ways, going and coming.

Senator LEAHY. Normally, about what time would you leave for the office?

Judge HASTINGS. It would depend upon when I called court for, but very occasionally I would get to the courthouse at or around 8:00 o'clock during that period of time, and sometimes, depending upon events of the day, a bit before that, in an effort to prepare, and most days I would leave sometime after 6:00 o'clock, as do all of the judges in the United States District Court for the Southern District of Florida.

Senator LEAHY. Do you find yourself rushed in the morning getting there?

Judge HASTINGS. I try to prepare well in advance for the eventualities that might occur on the expressway. To answer you, Senator, I try not to rush, but there have been times when I've had to rush and I don't know of any specific one that comes to mind, but it has happened a lot.

Senator LEAHY. What about—I understand you've suggested some antipathy toward Mr. Borders now, but thinking back, what kind of habits did he have? Did he keep these same kind of hours you do?

Judge HASTINGS. I don't know all of his habits, Senator, with reference to the hours that he kept. He was not a person that I was with on a regular basis, so to speak.

Senator, can I say something you just said about "I express antipathy now"? That's just said in a formal setting, but I have expressed a great deal of antipathy previous to this time.

Senator LEAHY. I'm not—you've answered the other question and I don't mean to go that other, just as a reference——

Judge HASTINGS. Yes, sir.

Senator LEAHY. What interests me—let me ask this: You note over here, we have the telephone conversation of October 5th, where you called Mr. Borders' office and you reach him around 5:12 in the afternoon. Were his work habits regular enough so that you could be pretty sure of reaching him at 5:12 in the afternoon?

Judge HASTINGS. I would think so, Senator.

Senator LEAHY. And was he a lawyer that might work a little bit into the evening, as a rule?

Judge HASTINGS. I have no way of really coming to grips with that. I called him at that point in time, I thought he was in his office. I don't know his work habits. I learned a lot more about him since the events than I knew then.

Senator LEAHY. Did you have any indication he was a person who would probably start pretty early in the day?

Judge HASTINGS. I can say this, Senator: Bill Borders seemed to, in a way, whatever it was he was doing, not have any special hour

to be doing it, and it would be late afternoons—his comings and goings have been the subject matter of a lot of people that know him, particularly in conjunction with the events ensuing during the 8-year period of time. Yes, sir, I would think it would be distinctly possible that on certain days he would get to his office early, yes, sir.

Senator LEAHY. I was curious, on May 11th you called at 6:28 in the morning for him. Does that——

Judge HASTINGS. I don't believe that was to his office, Senator. I believe that——

Senator LEAHY. No, it says to his home.

Judge HASTINGS. Yes, sir.

Senator LEAHY. But are you in the habit of calling people that early in the morning to——

Judge HASTINGS. I've called a lot of people, including judges that I work with, at that time in the morning, Senator.

Senator LEAHY. Are they always happy to hear from you that early in the morning?

Judge HASTINGS. It depends. There are night people and there are day people, but I can recall both persons who are pleasant when you call them early and others who were not.

Senator LEAHY. Are you a night or a day person?

Judge HASTINGS. I would like to think that I'm a day person. I try to get about six hours sleep a night, but I can go around the clock, if need be.

Senator LEAHY. Would this be a fairly often thing, for you to be calling somebody at 6:28?

Judge HASTINGS. I wouldn't think it would be fairly often, but it would not be uncustomary, from the extent that it has happened before.

Senator LEAHY. How about 6:00 o'clock?

Judge HASTINGS. Yes, 6:00 o'clock.

Senator LEAHY. About 5:30?

Judge HASTINGS. It depends. When I was a young man, I might call somebody at 3:00 o'clock in the morning, depending upon what it was I wanted and thought that they might supply.

Senator LEAHY. Well, I don't think we may want to go into that. I'm talking about calling—[Laughter.]

I'm talking about—the kind of professional services I'm referring to, Judge, is calling other lawyers.

Judge HASTINGS. Yes.

Senator LEAHY. Would you be—are you apt to be calling another lawyer at 6:00 o'clock in the morning?

Judge HASTINGS. Again, Senator, it depends upon the particular time frame and, yes, sir—McCrary, who has testified here, for example, and another lawyer that's a friend of mine named Del Stewart, we talk with each other a lot of times at 5:00, 5:30, 6:00 o'clock in the morning, because we know we're going to be gone about other pursuits during the day.

Senator LEAHY. Let me ask you this: On October 5th, the testimony is that after you spoke with Mr. Borders at 5:12, you reconsidered your willingness to send the Hemp letters. Tell me exactly why you reconsidered. What was said to you that made you reconsider?

Judge HASTINGS. No one said anything to me and I don't have a memory to recall any triggering events, save the fact I agonized about it and I felt that to send out a letter over my signature was going to be a breach of the canons of ethics as I had said to Hemphill the previous time, and so, in spite of Bill Borders' persistence, I just decided that that was something that I was not going to do and that I would tell he and Hemphill when I saw them in Washington, DC, and that was my intention.

Senator LEAHY. So, that evening you reached the conclusion that it may breach judicial ethics to send those kinds of letters?

Judge HASTINGS. I was considering doing it, Senator, I was considering sending them. Hemphill Pride——

Senator LEAHY. But you reconsidered it. I'm not sure I fully understood your answer, Judge. You said you reconsidered it on the evening of October 5th.

Judge HASTINGS. I agonized about it.

Senator LEAHY. This was after you spoke with Mr. Borders.

Judge HASTINGS. Yes, sir.

Senator LEAHY. I just want to make sure I fully understand why you reconsidered, because you felt that that may have been a breach of judicial ethics?

Judge HASTINGS. As it pertained to the financial aspect. As it pertained to the character aspect, I didn't feel that way, but I wanted to try to amplify, if the Senator will permit.

Senator LEAHY. Go ahead.

Judge HASTINGS. Well, I think it's clearly understood that, at that point in time, I had a deep personal relationship with Hemphill and there are some things that transcend most of the things that all of us try to observe in the way of avoiding conflicts of interest in our responsibilities, and I truly considered sending the letters, notwithstanding the flack that might come, because I wasn't about trying to breach the canons of ethics. I was merely about trying to help a friend and that's my explanation to you, Senator.

Senator LEAHY. My time is nearly up, and I may—in fact, I will come back in my next go-round, but let me ask you just one question.

Judge HASTINGS. Yes, sir.

Senator LEAHY. I'm just kind of curious, nobody has asked here—you talked about calling Mrs. Borders, your mother had suggested that, according to your testimony. What did you say to Mrs. Borders when you called her?

Judge HASTINGS. I said what my mother asked me to ask her, and that was how was she and how was she bearing up, in words to that effect.

Senator LEAHY. And what did she say?

Judge HASTINGS. As best I can recall, she said that she's doing fine and tell your mama that I'm going to write, and how's your mama, and words to that effect. But I don't have a distinct memory of everything that was said, Senator Leahy.

Senator LEAHY. Considering the fact that you were concerned about wiretaps, why didn't you just dial the phone, hand it to your mother and say, "Here, you talk to her"?

Judge HASTINGS. My mother didn't know Mrs. Borders and she asked me to call her.

Senator LEAHY. You didn't think it was at all dangerous to do that?

Judge HASTINGS. I wish it had been overheard, Senator.

Senator LEAHY. Mr. Chairman, I know my time is up, but I will wait for the next go-round.

The CHAIRMAN. Thank you, Senator Leahy.

Let me just ask—we are at the 5:30 hour—let me ask if the House managers can give us any estimate. We obviously have quite a few additional questions from members of the committee, but do we have any estimate as to the length of time the House would wish to take in rebuttal testimony?

Mr. BRYANT. We estimate no more than two hours.

The CHAIRMAN. No more than two hours. And then, of course, there's the possibility of rebuttal testimony by Respondent, which we could not expect them to estimate at this time.

Mr. ANDERSON. Mr. Chairman, if that is likely to take place tomorrow, could I also inquire as to when I'm likely to know just the witnesses and their order that the House now anticipates?

The CHAIRMAN. Is the House in a position to indicate who they might call, or when would they be in a position to state that?

Mr. BRYANT. We will be in a position to say that when Judge Hastings finishes his testimony.

The CHAIRMAN. We will go forward with additional questioning from the committee tomorrow. Let me do one other thing before we recess here. Let me advise that we will permit a summation by both Respondent's counsel and House managers after we have taken all the testimony. We hope we can get all that done tomorrow and we can have the summation tomorrow as well, and we are advising counsel that they should come prepared to summarize the case, if they desire to do so, at the close of all the testimony.

VOICE VOTE RE: RESOLUTION TO ADOPT COMMITTEE RULE 3, QUORUM FOR TAKING THE TESTIMONY OF WILLIAM A. BORDERS, JR.

The CHAIRMAN. We have one other item of business for the committee. I am advised by our counsel that we do not need a rollcall vote on this. It's an additional rule of procedure for the Impeachment Trial Committee and it's Rule 3, quorum for taking testimony of William A. Borders, Jr. during recess. I believe each member has a copy of this proposed rule and I would ask that all Senators supporting adoption of the rule indicate by saying "aye."

[A chorus of "aye."]

The CHAIRMAN. All opposed, "no."

[No response.]

The CHAIRMAN. The rule is adopted, we will indicate this in the Congressional Record.

The committee is recessed until 9:00 tomorrow morning.

[Whereupon, at 5:35 p.m., the committee was adjourned, to reconvene on Thursday, August 3, 1989, at 9:00 a.m.]

SUBMISSION OF COMMITTEE RULE 3 BEFORE THE SENATE

The text of rule 3 is as follows:

RULE 3—QUORUM FOR TAKING TESTIMONY OF WILLIAM A. BORDERS, JR., DURING RECESS

During the recess or adjournment of the Senate one member of the Committee shall constitute a quorum for the purpose of examination of Mr. William A. Borders, Jr., at which sworn testimony is heard and evidence taken.

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, AUGUST 3, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:26 a.m., in Room SH-216, Hart Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter, Leahy, Durenberger, Pryor, Rudman, Bryan, Bond, Kerrey, Gorton, Lieberman, Burns, and Domenici (ex officio).

House Managers Present: Representatives Bryant, Conyers, Synar, Gekas, and Fish.

Counsel Present: Terence J. Anderson, Patricia Graham Williams, Robert S. Catz, Lewis Myers, Jr., Sue Ann Hochberg, and Charles Francis, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Janice E. Cooper, Patricia Wynn, and Lori E. Fields, Assistant Special Counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Bruce McBarnette, counsel, Senate Impeachment Trial Committee.

Staff Present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. Judge, if you will be seated.

Judge HASTINGS. Here or——

The CHAIRMAN. Here at the witness table. We will proceed.

Mr. Anderson, did you have something before we continued with questions?

Mr. ANDERSON. Three points, if I could. You'll recall at the end of my cross-examination, at one point I was asked for a proffer as to certain facts. There are two facts that were used in cross-examination that I don't have a basis for, and I would ask that they be turned over.

One is, the question was asked whether Judge Hastings would be surprised concerning entries in the logs to his apartment. I haven't seen those logs, and I would like to see them since it was raised by Mr. Baron.

The second point, there was a proffer that someone had seen Judge Hastings with Mr. Borders in Los Angeles. I would like the identity of that person or the factual basis for that claim, because I'm not aware of it.

And, thirdly, at this point it seems to me that we ought to have some sort of proffer as to who the rebuttal witnesses are, so that at least I can be ready when the rebuttal ends, if we're moving this fast.

Those are the three things I'd like to place on the table right now, Mr. Chairman.

The CHAIRMAN. Is the House in a position to make available to respondent's counsel information on the two items that he has asked about?

Mr. BARON. Mr. Chairman, we will provide to counsel for respondent the basis on which I asked those questions.

The CHAIRMAN. That would be good. Is the House in a position to tell us anything about their rebuttal witnesses at this point?

Mr. BARON. I think I have good news. The House does not intend to call any rebuttal witnesses.

The CHAIRMAN. All right.

Mr. BARON. We do have some documentary evidence that we will put in, but no witnesses.

The CHAIRMAN. All right. At this point, why don't we continue with the questioning by the committee? We're still following the 10-minute rule. I believe Senator Leahy completed his first round, and Senator Durenberger is next.

Senator DURENBERGER. Mr. Chairman, thank you.

Good morning, Judge.

TESTIMONY OF JUDGE ALCEE L. HASTINGS (continued)

EXAMINATION BY THE COMMITTEE (CONTINUED)

Judge HASTINGS. Good morning, sir.

Senator DURENBERGER. Did you sleep well?

Judge HASTINGS. Interestingly, Senator, I did not last night for the first time.

Senator DURENBERGER. Well, I'm sure it wasn't because I was first up this morning. [Laughter.]

Thank you very much for your patience with all of us. As you sit here this morning, whether you slept well or not, what are your feelings about the general fairness of the process of the last three-and-a-half weeks, particularly as you reflect on the people on this side of the table?

Judge HASTINGS. I feel very good about it, Senator, and it gives me an opportunity to thank you all for your attention.

I think through my lawyers and myself I expressed my feelings with reference to the impeachment process, and I think we have reached another plateau that I did not think that we would reach. And I still think it's a mistake to have reached this plateau, but not as it pertains to the members of this committee. You are doing what I believe you believe is the proper thing.

I recognize that the work of the United States Senate—I've sat here and talked about the work of United States District Court judges, but your work is awesome. It's sizable; it's complex, and this impeachment thing is a difficult thing for you, and I recognize that. Cumbersome as it is, I think that this body, this group, your aides and everyone else have been more than courteous and more than fair insofar as these proceedings.

So I feel very good about it regardless of outcome. I don't feel good about how I got here, and I never will.

Senator DURENBERGER. One of the things that struck me during the course of the trial was the point at—because this is a first-time experience for most of us, I guess 75 percent of us. At one point in the trial, I think it was when we were dealing with the issue of the disclosure of the wiretap, you made a fairly positive—it sounded liked a very considered statement about your view of the applicability of the impeachment standards to one specific act on the part of a Federal judge when you said if that's a fact, should be impeached.

Judge HASTINGS. Sure.

Senator DURENBERGER. As you approach the conclusion of this process, do you have a more general threshold on which you would like to see yourself judged by the 12 of us. I know that the unique thing about this process is at the end there ain't no judge to sit over here some place and give us a threshold that we have to——

Judge HASTINGS. Yes, sir.

Senator DURENBERGER [continuing]. We have to meet. As one of the people who has now experienced this from the other side, do you have a sense of that threshold or what your expectations of that threshold ought to be?

Judge HASTINGS. Senator, my expectations are not going to allow for it to be the case. I will express myself to you. Reality basing, it is going to be decided based on, for lack of a better expression, the eye of the beholder. And the so-called standards, I've met, I believe—you are fully mindful—I have met the highest standard that is applied to any criminal offense, and that's the standard of beyond a reasonable doubt.

But to the degree that judicial accountability ought to always be on the table, and I believe that it should, then it is perhaps reasonable—although I'd disagree with it—that preponderance of the evidence or clear and convincing or gut feelings might be what some Senator decides this matter on.

Quite frankly, Senator Durenberger, I think the Nation needs a constitutional amendment to address this process, and I seriously feel that the Judicial Conduct and Disability and Reform Act is unconstitutional; and if it is not unconstitutional, it is seriously flawed and needs to be revisited.

But as to your job, far be it from me to suggest to you what the standard ought be. I think each of the standards will and likely should be applied that one might.

Senator DURENBERGER. But my impression is, from your testimony, that you held yourself as a member of the Federal bench to a higher standard than you would probably hold anyone else other than perhaps the President of the United States or perhaps a member of this body. Was I accurate in that testament of your view?

Judge HASTINGS. Oh, most assuredly, Senator. And if we were to shotgun through the Articles of impeachment—first off, had I been where the House managers are, there probably would be but three Articles of impeachment. I am in firm disagreement with the sweep clause. The five persons who were convicted before the Senate, four of them were convicted on what I refer to as the

"sweep clause," conduct unbecoming. And it didn't have anything to do with the substantive aspects.

For example, Judge Ritter in 1936, from my district, was removed on conduct unbecoming, and that's as it should be.

If we look at all 17 of the Articles as they apply to me, my disagreement would be mistakes about a phone call. Removing somebody from office for that would be ludicrous in my opinion. But insofar as lying before the jury intentionally, now that we are here, even though I think the double jeopardy standard should have precluded these proceedings—and we've lost those issues, and I understand that. But now that we're here, then be assured that I think that a judge's accountability ought to be higher than ordinary persons; because of the nature of the work that they do, they should be circumspect. And that should apply most especially to me with the kinds of problems that have been ongoing over the eight-year period of time.

Senator DURENBERGER. Judge, do you believe that your friend, Bill Borders, was appropriately convicted?

Judge HASTINGS. I have some feelings about it. I think that he should have been convicted of a crime because he committed a crime. But he didn't commit conspiracy with me. And I have difficulty—insofar as my understanding of the law, I don't believe you can conspire with an undercover agent, and I don't believe that you can in the final analysis conspire alone. And in that sense, I would have visited that particular subject. But as to whether or not he should have been convicted of some crime, assuredly. And you refer to him as my friend. Let's say former friend.

Senator DURENBERGER. Former friend.

Judge HASTINGS. OK. So as how we will have an understanding.

Senator DURENBERGER. The members of the Senate are going to be asked to choose, it strikes me, between two seemingly implausible scenarios. We're to believe that a Federal judge who has been acquitted by a jury actually engaged in a criminal conspiracy. Or we are to conclude that a man of your intelligence and experience was manipulated in some way over the last eight years into playing an innocent role in a conspiracy, or a crime of some kind, which you, that very intelligent, very astute man of many affairs, if you will, didn't discover until after Borders' arrest. And both of those are supported only by circumstantial evidence.

I think all the members of the committee have been impressed by your intellect and your knowledge, and the question we're going to have to answer in one way or another is: How could Bill Borders have managed to pull the wool over your eyes?

Judge HASTINGS. I was not the only person that it does appear that he was able to do that with. I think the answer quickly is that obviously there were two people. And it is not beyond the scope and ken of the members of this committee, I'm sure, to have had or have a person who you thought was a responsible person and upstanding to fall from grace, if you will, even as it pertains to your own eyes.

In this particular situation, I think that Bill Borders would fall in that category. And I had no reason to suspicion him. He obviously had influence. We've heard people here that said he walked the

halls of the White House. In that sense, I had no reason to be suspicious of his conduct until such time as it came to my attention.

Senator DURENBERGER. By two people, you mean two Bill Borders?

Judge HASTINGS. Yes. That's what I have referenced to, Senator Durenberger.

Senator DURENBERGER. My time is up, but a related question. Do you have any reason to believe, because of the incredible coincidence that House counsel took you through yesterday, all of these phone calls——

Judge HASTINGS. Yes, sir.

Senator DURENBERGER. Do you have any reason to believe that there were two real persons—I mean one a person other than Borders, perhaps someone close to you, somebody in your office—who could have been involved in some way in this process?

Judge HASTINGS. I think I have expressed myself about my feeling about speculating, Senator, but I want to be as frank as I can. I think Joe Nesline was a person of considerable influence in the underworld, if you will. I think Joe Nesline easily could have known the Romanos. I think it's patently clear that the Romano brothers did know persons in the underworld. I also think that William Dredge was a person that was very conversant with the circumstances.

Anyone with that kind of understanding could very well have begun the process that led to my indictment. And I believe if we go back and reflect on some things that Neal Sonnett has said here on the record, the Romano brothers evidently were approached by someone long before William Dredge even said anything about it. I've always been curious about that.

And in that sense, there are a lot of other coincidences: William Dredge calling Las Vegas, Nevada, on the day when Borders had told me that he would be at the Fontainebleau, albeit that phone call that I refreshed my memory to find occurred before the time that I was going to get there. But this Borders fellow evidently had the ability to make a lot of arrangements by pay phone. And so in that sense, Senator, I would think that certain information could have been gathered by others in this process.

The CHAIRMAN. Senator Pryor is next.

Senator PRYOR. Thank you, Mr. Chairman.

Judge Hastings, for just a moment, I'm going to take a portion of my five minutes to pay a tribute, if I might——

Judge HASTINGS. Ten, sir.

Senator PRYOR. Oh, 10 minutes. I hope I don't take all that time. To pay a tribute to our chairman of this committee and to our vice chairman, and also the respective members of this particular panel which was uniquely formed by both of the leaders of the Senate, naming us, 12 people, six Democrats, six Republicans, no partisanship, for this very not-sought-after position that all of us have.

I think that our chairman and vice chairman have done everything conceivable to make this a fair and impartial hearing, to give you every benefit, to provide your counsel with everything that we have at our disposal, and to encourage the House managers to provide them with every fact that might be relevant.

On the other hand, I think that your attorneys have been exemplary, those people who have represented you as a respondent. I would like to compliment them as well as the managers from the House.

This is an extremely unique and cumbersome, mysterious system by which you are before this panel today. This is our fourth week. I spent a considerable amount of time also on another panel with Judge Harry Claiborne.

Judge HASTINGS. Yes, sir.

Senator PRYOR. In both of those cases, in your case and Judge Claiborne's case. I would just like to say to you—and I think I can speak for all of this committee—not one time in any of our proceedings, in public or in private, did I ever hear or have I ever heard one Senator yet to say how we might vote ultimately on this matter when it comes before the United States Senate. We have sought fairness; we have sought facts. This is why we have subpoenaed Mr. Borders. It may be to no avail. Who knows? That is his decision.

Everything that this panel has done, with the thrust and hope, I know, of our chairman and vice chairman and all of us, has been to ascertain those facts. We have four former Governors. We have three former attorney generals. We have an auctioneer from Montana. We have U.S. attorneys, former U.S. attorneys. We have defense lawyers. It is, I think, a good composite, and I want you to know, sir, and your staff, those people who have represented you, I assume without any fee, and also the House managers to know that I think this proceeding has been extremely fair. And I hope and we hope that you feel it has been fair.

Judge HASTINGS. I do, Senator Pryor.

Senator PRYOR. With that said, I would like to ask a couple of questions. You had an enormous travel schedule. You were on planes, in hotels, having dinners. You had a lot of expenses. How was all this financed? How did you finance this? I know sometimes, perhaps, they would pay your hotel room or bill or lodging. But this was an enormous amount of money that accumulated over each year of your travel. And I compliment you for being available in talking to every group from the YMCA to the Bar Associations.

Judge HASTINGS. Yes.

Senator PRYOR. How was this financed?

Judge HASTINGS. In almost each instance, Senator, with the exception of a handful, the parties who invited me would have paid my expenses. When I worked for Bethune-Cookman College as a member of the board of trustees, that's just in Orlando, Florida, and usually I travel by car or by plane. And it's a deductible item, the work that I do with them.

Sometimes when I speak for a church, it's also a matter that if I were to take it on my taxes, I probably could. I don't, and I have not. But in many instances, when I speak for a church, I do so at my own expense.

By and large, there are organizations. For example, Ben Hooks asked me to speak for the NAACP once for, quote, "a widow's night." Well, they paid for my airplane and my room, and a lot of times that's all that's paid for, is the airplane and the room. And in that sense, that's how I was able to do that.

Since the indictment, in an effort to try to meet muster, I have accepted some honoraria, and I filed those on my financial disclosure form, and the previous judge, Judge Tamm, and Judge Pratt have been fully mindful of that, as well as the Internal Revenue Service. I have not made a lot of money doing that, but I've had to try to do something to supplement my salary during the crushing burdens financially.

But to answer you, Senator, almost in every instance—and I could pull the records. I have not thrown any of those away. I could pull the travel records, and you would see that they were paid for largely by organizations and/or groups that I spoke for.

Senator PRYOR. Thank you, Judge Hastings.

Judge HASTINGS. Yes, sir.

Senator PRYOR. Let me ask this about—you stated yesterday as you were testifying that you had not seen Bill Borders except once, I believe. Am I correct there, you have not seen him? My question is: Have you spoken to him other than acknowledging him when you met at the elevator subsequent to October 9, 1981?

Judge HASTINGS. I spoke to him once in the presence of his attorney—that I have an independent recollection of—John Shorter and he in John Shorter's office. I remember it vividly because I catch cold very easily through my feet, and it was snowing and I got wet on that particular day. But it was in the nature of interview, and Borders didn't stay long. And I spent a considerable amount of time talking with Shorter. This was in advance of Borders' trial.

Subsequent to his trial, and my trial, I have not had conversations with him at all. And I did see him, as I indicated, at the National Bar Association meeting—and I forget the exact year but I could find it for the Senator—and that is when it occurred in New York City at the Hotel Marquis. And I saw him then.

But if I saw him at any other Bar Association meeting—and I've been to three or four since 1981—it would only have been to see him. And, therefore, when Mr. Baron said on yesterday about me sitting and talking with him amiably, that simply would not occur, Senator—at all, ever, then, or in the future.

Senator PRYOR. Have you ever used a third party to establish some method of communicating with Bill Borders, sending him messages or him sending you messages?

Judge HASTINGS. Not sending messages. But I'll tell you what I did. One of the lawyers that has worked with me—again, gratis—is Mark McDonald, and Mark and I had a conversation. Mark McDonald is from Houston, Texas. We had a conversation very, very recently about—when I say very, very recently, in the last six months—about, you know, "Why won't this guy come forward and say that you didn't do anything here, Al?"

My understanding, and I am not privy to anything more than the fact that Mark met with Bill Borders and put that on the table with him. As to the when of it all, I can call Mark and ask him when. As to the where of it all, I did not promote it. And when I say I did not promote it, I talked with Mark, I thought it was a feasible thing. I didn't know when he did it, under the circumstances, where he was. But what he reported to me was that Borders refused to talk about it.

Now, another third party or several other third parties have also made approaches to him, but those were dating back in 1981 and 1982 before my trial. We tried to get a Byrd affidavit, and we wanted him to sign an affidavit saying that I didn't have anything to do with this. And he refused.

So those would be the only intermediaries. Now, I've talked with his attorney, and my lawyers have talked with his attorney. And in each instance, it's been to try to get an understanding as to how we could get him to come here and say what the truth is, and that is that I had nothing to do with this.

But as to speaking with him personally or through intermediaries, that has not been offered by me in that sense.

Senator PRYOR. Judge Hastings, one final question. Mr. Chairman, very quickly.

The CHAIRMAN. Yes.

Senator PRYOR. You knew what the Romano brothers looked like, Frank and Thomas Romano——

Judge HASTINGS. Senator——

Senator PRYOR. You know exactly what they looked like.

Judge HASTINGS. They were like Mutt and Jeff. One was little and one was big. And, yes, sir, I know now and I do have an enormous facility for faces and names, sir.

Senator PRYOR. Question: Did Bill Borders ever mention to you or ask you—did he ever, for example, say, "Judge, describe how these Romano brothers look. What does Frank Romano look like, for example?" Did he ever do this?

Judge HASTINGS. No. And, Senator, more than that, if I had been involved in a conspiracy with him, that would, to my way of thinking, have been a must. And, you know, I'm just trying to put myself in the prosecutor's view in asking you to understand the logic. I knew these people extremely well. The trial consumed the month of December.

I keep referring to it, and I don't know whether graphically it's understood. One of the Romanos had a serious heart problem, since has died, obviously, of that problem. We went to the hospital and conducted a very unique proceeding. His doctors had him hooked up to the appropriate monitors and everything, and we literally deposed him and played that to the jury. That became one of the issues that went up on appeal as well.

But you don't do things like that and don't have a distinct memory about what the people look like. So, yes, sir, I knew what they looked like, and Borders never asked me anything, nor did I ever say anything to him at all about the Romano brothers.

Senator PRYOR. Judge, my time is expired.

Judge HASTINGS. Thank you, Senator.

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman.

Good morning, Judge Hastings.

Judge HASTINGS. Good morning, Senator Rudman.

Senator RUDMAN. Let me just start out with a very simple question. October 9th, L'Enfant Plaza, telephone calls; you leave; you go to Baltimore, back to Fort Lauderdale. Would you explain to me why you didn't make at least one phone call to find out whether or not you could not have gone from Washington National Airport?

Why did you, based on a knowledge of airline schedules that obviously could only be incomplete——

Judge HASTINGS. Yes.

Senator RUDMAN [continuing]. Essentially simply leave that place, take a $50 cab ride? Why did you do that?

Judge HASTINGS. Senator, I thought that the 505 flight from Baltimore would go directly to Fort Lauderdale, and that's what was in my mind at that time. I also would that you understand that that was a pretty frightening set of experiences, the way that it was coming to me. And as I look in retrospect, the Senator's logic is infallible. It seems like it's something that I should have done. I simply did not.

Senator RUDMAN. It appears suspicious, but you say that it was because you were frightened, panicked, whatever.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Because you were now being obviously connected in some way to a criminal conspiracy.

Judge HASTINGS. That is correct, Senator, and it does appear suspicious. I can't deny that.

Senator RUDMAN. Judge, I want to now turn to the conversation, the now famous conversation of October 5th. I daresay that most members of the panel will be able to cite it by memory by the time we leave here.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. I want to just get into—you know, whether it's in code or not is not my purpose. I would just like you to explain some things to me because if there's anything that I've learned about you in three-and-a-half weeks is that you have an extraordinary command of the English language.

Judge HASTINGS. Thank you, sir.

Senator RUDMAN. And you don't stumble for words very often, and you say what you mean, and I want to address you to one part of this. If you'll use the Professor's terms, a turn, whatever, I'll call it line.

If you look down to Line 13.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Just before that, up in Line 11, you say, "I've drafted all those . . . letters . . . for Hemp."

Judge HASTINGS. Yes.

Senator RUDMAN. That's self-explanatory. Borders acknowledges that.

Then you say, ". . . and everything's okay. The only thing I was concerned with was, did you hear if, ah, you hear from him after we talked?"

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Explain what that means to me, because it could mean a lot of things, according to the House managers. What does that mean?

Judge HASTINGS. It means that I was concerned to know whether William Borders had received additional information, or information concerning Hemphill's financial condition. And what happens, Senator, I am not a linguist at all, but I can assure you that the construction of this particular statement allows that one could easily conclude that Borders and I had been talking about this par-

ticular subject totally removed from Professor Shuy's notion of a hastily prepared, partial letter code. But we were talking about something we both were familiar about.

We had had a lot of conversations about Hemphill, Senator, and that's all that was about.

Senator RUDMAN. Well, I understand that, and that's been your testimony uniformly. But I would point out that when you say "ah, you hear from him after we talked?" And you now answer, and you say you wanted to know if he had any more information that he had received—"he," Borders, from Pride.

Judge HASTINGS. That is correct.

Senator RUDMAN. I would point out to you that this whole thing started in March 1981 with his release from prison. In fact, it started before that in October 1980.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. According to your testimony, with Pride's mother writing and asking you about some things. And this goes on for, you know, months and months and months. So I don't really understand what you're saying here, or maybe you can explain it better——

Judge HASTINGS. I think I can——

Senator RUDMAN [continuing]. When you say did you hear anything else from him.

Judge HASTINGS. Yes.

Senator RUDMAN. It doesn't make any sense, Judge Hastings.

Judge HASTINGS. No. I think I can help, Senator.

Senator RUDMAN. All right.

Judge HASTINGS. I now know—I did not know on October 5th—that Hemphill had judgments against him and matters of that kind. He didn't tell me those things, and I gather that Bill Borders was privy to that. And what I was interested in was an exact amount, and I wanted to put that exact amount in the letters.

Senator RUDMAN. All right. Well, let's turn to Line 18, then.

Judge HASTINGS. All right, sir.

Senator RUDMAN. Line 18, Borders says, "See, I had . . . talked to him and he . . . wrote some things down for me."

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Now, I'll tell you something, Judge. You know, Borders is educated, you're educated. He's talking about a telephone conversation.

Judge HASTINGS. That's right.

Senator RUDMAN. Now, unless there's some new type of telecommunication between Columbia, South Carolina, and Washington, DC, I don't understand that that is plain English. Because what Borders is saying is that while talking to Hemphill Pride, Pride writes some things down for him.

Judge HASTINGS. Sure.

Senator RUDMAN. Now, if he had said, "I wrote some things down that he told me," I would understand that. But that's not what he said.

Judge HASTINGS. Sure.

Senator RUDMAN. What did that mean to you?

Judge HASTINGS. It meant to me that he had gathered the information that he and I were talking about concerning his financial condition. What you have to do, Senator——

Senator RUDMAN. But how is that—but come down to the basic language.

Judge HASTINGS. Sure.

Senator RUDMAN. "He wrote some things down for me." They're on a telephone. It is Borders who, under your theory, wants the information.

Judge HASTINGS. Oh, no, no. I see what you're saying.

Senator RUDMAN. Maybe I misunderstood the evidence.

Judge HASTINGS. Yes, you did, Senator.

Senator RUDMAN. Please explain it.

Judge HASTINGS. Most respectfully there was a period of time that Pride came through Washington, DC, that Bill Borders had indicated that he would see him, and that's in advance of this particular conversation.

But, Senator, I also——

Senator RUDMAN. Do you have a date for that? Was that close to this conversation?

Judge HASTINGS. I can find the date for you.

Senator RUDMAN. Because we don't have any evidence here of Pride being there about that time.

Judge HASTINGS. Oh, no, sir. Yes, you do. You do have Pride being in there through the September period, at the 11th, 12th, 13th period. And you also have at least the allusion—but what you have to understand is that whatever was going on with me was nothing more than trying to gain information to put in the letters to try to help the fellow that I decided not to do.

What Borders may have been doing was not telling me everything as it was required, and you really have to know, Senator Rudman, that Bill Borders is a very strange person on the telephone. And I could have brought a lot of people in here to say that.

Senator RUDMAN. I would say that he's a very strange person, period, from what we've heard so far. But let me get to the last line, Line 20.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. "And then I was supposed to go back and get some more things." Now, you know, this has been going on for six or seven months. He tells you he wrote some things down. You're about to write the letters.

Judge HASTINGS. Yes.

Senator RUDMAN. The letters are imminent. And now he says he's supposed to go back and get some more things. What does that mean?

Judge HASTINGS. The only thing that the entire conversation meant to me was that he was about the business of learning about the man's financial circumstances, and it was my hope that he would advise me with reference to same. And, Senator, I can't change what I felt at that time, and that's how I felt.

Senator RUDMAN. All right. Let me turn to the whole relationship between Borders, Hastings, and Pride.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. Your defense to what some would think would be a damaging piece of evidence, this and other evidence, is that you were, since really October 1980, trying to help Hemphill Pride.

Judge HASTINGS. Sure.

Senator RUDMAN. And yet if you look at the record, going from October 1980 until October 5th 1981, the fact is that other than passing the hat in Chicago and your personal generosity on two occasions, with all of the contacts that you had in the country—and I daresay, listening to you, you had enormous contacts in the country and various associations. With all of Borders' connections with very important people all over the country, if you had such a deep concern to Hemphill Pride, Judge Hastings, it sure doesn't show in action. It doesn't show you did very much for this man. And I want you to tell me whether or not that's right or wrong.

Judge HASTINGS. It's wrong.

Senator RUDMAN. Why?

Judge HASTINGS. Because there are other things that were done that are not in the scope of this limited inquiry.

Senator RUDMAN. Like?

Judge HASTINGS. Among them being just plain advice and counsel and friendship. Those particular items that came up came up only because Mrs. Pride, for example—I could find the one letter. But I had other letters from Mrs. Pride. And if you had had either—you only had one Mrs. Pride here, but there was a second one. And had you had Mildred Pride here, she would tell you about—of my continuing concern and help for his oldest son, not his second wife as well, and trying to assist there. Mrs. Pride, his mother, would tell you of my continuing concern for her, both when he was in prison and afterward.

If you had the litany of things that I know that William Borders did for him, if you had the litany of things that Julius Chambers, for example, who is the lawyer for the National Association for the Advancement of Colored People Legal Defense and Education Fund—that's a whole lot. But Julius, countless of us, were about the business of helping Hemphill. And even though in this limited record there is a little, there is an awful lot that I did for that man, Senator, over a protracted period of time dating back to 1961.

Senator RUDMAN. But in terms of post-1980, there was not a great deal of money raised for Mr. Pride.

Judge HASTINGS. No, sir.

Senator RUDMAN. That's not true?

Judge HASTINGS. That is true.

Senator RUDMAN. That is true.

Judge HASTINGS. I did not raise a great deal of money for him.

Senator RUDMAN. That's what he really needed more than anything else.

Judge HASTINGS. And that's what this conversation was about. And that's what William Borders was about in continuing to ask me to help him in that regard.

Senator RUDMAN. I thought that conversation was about letters for Hemp.

Judge HASTINGS. No. Financial consideration. The letters, if you read them, Senator, will suggest that I had drafted letters asking

for financial consideration and character offerings on behalf of Hemphill Pride.

Senator RUDMAN. I have one last question, and my time is up, if you could answer this very briefly. You know, we've got these charts which you've seen.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. You've had copies of them. I won't caption everything. But what this panel is going to have to do is to advise our colleagues when we debate this in closed session——

Judge HASTINGS. Yes, sir.

Senator RUDMAN [continuing]. Whether or not circumstantial evidence which is substantial can be counteracted with credulity as being mere coincidence. And I just want to give you one short capsule of what I'm talking about in a precise way. And I want to look at the May 5th time frame, and what I'm about to tell you are items that are in evidence, undisputed.

Judge HASTINGS. Right.

Senator RUDMAN. On the 11th of that month of May, the *Romano* forfeiture/sentencing hearing was postponed.

Judge HASTINGS. That's right.

Senator RUDMAN. Now, here are some events that I guess you're telling us you want us to believe are totally independent of each other, they are not coordinated: the fact that you and Mr. Borders both depart the Miami Airport on May 5th on separate flights to different destinations; that Mr. Dredge calls Mr. Borders at Petty's home at 11:26 in the evening; that you call Mrs. Petty's home at 12:07 in the morning on the 6th; on the 7th, that Borders calls Dredge; on the 7th, you leave a message for Borders at 4:30 in the afternoon; on the 10th, Dredge is arrested and Borders calls Dredge; on the 11th, you call Borders at 6:27 a.m. at home, and then Hastings calls you—Hastings calls Borders at Petty's home at 6:28 a.m.; and on the 11th, the hearing starts at 1:00 o'clock.

What you want us to tell our colleagues on the floor is that those events are all independent of each other and they are coincidence. They may well be; that is your position. There was no coordination in any of that whatsoever involving you. That's your position.

Judge HASTINGS. If you telescoped and thought that that was all that happened during that period of time, then I would adopt the Senator's logic. But if you use a wider scope, as I would urge, respectfully, Senator, you would learn that during that same period of time other events transpired.

Please know that I believe—and I'm using nothing more than memory. I can get for the Senator the events that were transpiring. I believe that's the period that Borders had been removed by then President Reagan, was being sought to be removed, and was considering his lawsuit. We were discussing that particular matter, I'm pretty sure, during that period of time—if that is that time. If not, there are other events that coincide with some of these calls that would have been National Bar Association meetings.

But I don't think that you, Senator, or any of the Senators understand that I talked with Bill Borders about a lot more things that just Hemphill Pride and the National Bar Association. I talked with him about other judges; for example, Fred Gray in Alabama who did not become a judge. We spent a lot of time trying to

work out Fred's problem. And I talked with Borders about traveling to Europe with Attorney General Bell. He was really elated about that. He must have called me at least two or three times in advance and certainly when he came back.

So it is not as if I only talked with him about the matters that are telescoped. Please know that, and I assure you that if we look at the total record, as I believe the Senator has and likely will, then the facts will bear out that there are things that are particularly mindful of being credible as opposed to being incredible.

Senator RUDMAN. Then your answer that we will carry back to the floor is that events like this, taken in or out of context, are coincidence and not coordinated in any way?

Judge HASTINGS. No question.

Senator RUDMAN. Thank you.

The Chairman. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Judge, you had an extraordinarily close and long-time personal relationship with Mr. Borders. His life is in total shambles. He's been indicted, he's been prosecuted, convicted, served time, and has been disbarred. He and you were the closest of friends over the years.

You certainly must, over the last eight years, have had an opportunity to reflect. Why won't Bill Borders come and appear before this body and tell us what actually happened?

Judge HASTINGS. I think it has been established, Senator Bryan—and if the record has not established it, I can only ask you to draw from the record that's before you and all of the record dating from mine and his trial—that Borders evidently had an association with a considerable number of people totally unrelated to mine and his friendship. That relationship clearly, from this record, demonstrates that he was involved in some way, if nothing more than friendship, with figures in the underworld.

Now, I did not characterize the fact that he might feel threatened. John Doar did, who preceded the House managers' work with the judicial inquiry. And if you read that record, you will see that John Doar said that one plausible theory as to why Borders might not appear is because he might fear that he will be harmed by someone if he talks, not about me, but about anybody.

And the Senator would not have anybody believe, would you, that if Borders comes in here and testifies that I didn't have anything to do with this at all, that the House managers, in doing their job, are not going to point out all of the things that they know or think they know about him? Conversely, if Borders were to come in here and testify against me, I will unload on his butt like you never will believe regarding matters that we either know or think about him?

Now, in that particular sense, sir, all I can tell you is that the man may very well feel threatened. He's lived eight years in that shambles, and I want to add, Senator, that my life and my mama's life and my loved ones' lives have been in equal shambles. I may very well have been found not guilty, but I'm not free of these circumstances, and they've been with me continuously for eight years. And it is not comfortable.

I wish that Bill Borders would come in here and say that I didn't have anything to do with this, as I'm sure he knows and I know that that is the case. But if he feels threatened by other people, please know that I have not done him any harm. I've not gone to hunt him, to hurt him. And under those circumstances, I simply cannot tell you the why of it all. But I believe it is likely that he feels that he would be hurt by someone totally unrelated to me in coming here before the United States Senate.

Senator BRYAN. Judge, you're of the opinion, then, that Mr. Borders was involved in other activities beyond the scope of the *Romano* case which brings us to this proceeding?

Judge HASTINGS. I'm of that opinion.

Senator BRYAN. You knew the man for many, many years. You had dozens of phone conversations. You had many, many personal meetings with him. Anything during that period of time that suggested to you that in some way this man wasn't on the up-and-up? You're a long-time friend. The man that you obviously talked about many things personally, aside from the *Romano*——

Judge HASTINGS. Sure.

Senator BRYAN [continuing.] Allegations that you're faced with today.

Judge HASTINGS. Sure.

Senator BRYAN. Anything during those conversations that suggested to you that here was a man that was slipping off the edge, that was involved in activities that were surely going to bring discredit to himself, to his family? Any kind of indication that you had?

Judge HASTINGS. Senator, I don't want to invoke other names just to invoke them. The answer to your question is no, sir, but with an explanation. Bill Borders was as close to Griffin Bell as he was to me, and Griffin Bell is one of the most highly respected people in this country. And I believe if the former attorney general was to come here, he would tell you that he, too, is very surprised about this same man that we are talking about.

Then, Senator, please, I don't want to filibuster, but I know that you've had experiences as a lawyer, and I can't count the lawyers that I know—or perhaps I can. I know a lot of lawyers, more than 10, more than 15, black and white, that I've known in my lifetime that got disbarred. And I associated with them. One of my very dearest friends I associated with way more than I did any Bill Borders, and he was disbarred. And when he was disbarred, it was the most shocking thing to me to learn that he had been messing with folks' money. I didn't know that. I didn't know it, and I'm sure you've had that to happen to some friend.

Senator BRYAN. Let me just ask one specific question, and my time is running out, too. During those calls that were made from the Baltimore Airport on the late afternoon, early evening of the 9th of October, there was a call that was made to Patricia Williams. And you indicated, if I recall the testimony correctly, that you wanted her to use another telephone because you apprehended that that telephone might be tapped or bugged—I don't want to put words in your mouth.

Judge HASTINGS. Yes, sir.

Senator BRYAN. But that clearly was the thrust of it. Had you any indication at all on the 9th of October that your activities were in some way being monitored, that you were the object of any kind of investigation or suspicion by any public agency?

Judge HASTINGS. No. No, not until the 9th, Senator. But I began as early as August to begin to be—I began to be concerned about whether or not I was being listened to on the telephones. I so much—you've only had one member of my staff. I don't know—I didn't hear Marilyn Carter's testimony. That's the day that I had an appointment. But I believe if you had asked Marilyn, she would have told you that I had a similar conversation with her as I did with Betty Williams, either of my law clerks and including the interns. I had conversations with them about the fact that I thought that the phones might be listened to.

My mother and I were very concerned about that, and because it probably is extraneous to the concerns here, we did not bring up a lawyer named Richard Katz who demonstrates clearly that something was awry on my phone in that he was trying to reach me to get a person who wanted to get out of prison to attend his grandmother's funeral. And he was trying to reach me, and someone interceded and said that they were me, and Mr. Katz and I—I never knew him before in my life and have since distanced myself from him for the reason that I thought one day I might have to say this. But, yes, sir, at that time, for whatever reason, I began to think that I was listened to, which, please, Senator, causes this to be the most incredible thing on earth to my way of thinking, and that is that October 5th conversation.

I suspicioned, without knowing until October 9th, that I was being listened to, investigated. I wasn't doing one single solitary thing that was deserving of being investigated in my mind. I know now that there was something that was a-brewing. But, yes, sir.

Senator BRYAN. And you felt the same type of suspicion about Patricia Williams' telephone as well?

Judge HASTINGS. I certainly did. And, Senator, please accept my paranoia for what it is. I feel that way now. And Professor Anderson and I from time to time, even at the University of Miami when we're talking on the telephones, feel that way.

Now, I can't prove it, but that's how I feel.

Senator BRYAN. Thank you. My time is up.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you, Mr. Chairman.

Judge, you just mentioned some of your attorney friends who've been disbarred. Former Governor Bryan and I have—I know of at least half-a-dozen colleagues in the Governors Conference who've been indicted and convicted as well. So there's a lot of that going around.

But let me reminisce with you just a little bit. About the time you and I both were getting out of law school, I served as a clerk on the old Fifth Circuit in Atlanta, got to know your friend, Judge Griffin Bell, quite well then, and we were doing a lot of work in the civil rights area. Did you have as an attorney any cases—you mentioned a civil rights practice. Did you have any cases that went up before the old Fifth Circuit?

Judge HASTINGS. No, sir, I didn't, and I wish that I'd been up there with Judge Wisdom and Judge Tuttle. I've met them both since that time, and I think that their work, including Judge John Brown's work, was awesome in that area to say the least. But, no, sir, I never traveled to the Fifth Circuit. Most of my practice was a State practice.

I did have several Federal cases, including the original school desegregation case in Broward County, and that stayed local for seven years and there was no reason to appeal because everybody was pretty much consenting to the things that needed to be done at that time. So, no, sir, I didn't get to the Fifth Circuit, regrettably.

Senator BOND. By the time you were appointed to the Federal bench, it had been split into the Eleventh by then?

Judge HASTINGS. Yes, sir.

Senator BOND. Any major civil rights cases coming up? Did you have any cases——

Judge HASTINGS. No, sir. By the time the split occurred, I was on the State court bench in the State of Florida and then assumed the bench at the United States District Court, and just about everything that we do is taken to the Eleventh Circuit. And I don't say that facetiously. But we have an active criminal caseload, as I'm sure the Senator knows, and most of those cases, when people are not victorious, are appealed.

Senator BOND. Yes, I understand that.

Well, let me—is the Eleventh Circuit still—are they still continuing the tradition of the old Fifth Circuit on the civil rights cases? Do they still have the same——

Judge HASTINGS. Yes. First, when they split, there was Panel A, Panel B, it was called, and the precedents as enunciated by the old Fifth became the law of the Eleventh until it developed its own. It does seem at this point that there's a bit of a breakaway from the old Eleventh. There are still many traditions that are carried on. There is every other year, to my memory, a joint meeting of all of the judges in those circuits because there are many of them who are continuing colleagues.

But what had happened was the split, and now I believe the Eleventh Circuit is its own person, if you will, looking at it from an institutional standpoint.

Senator BOND. Thanks for the information. I guess we'd better get back to the matters at hand.

Let me ask you, when Mr. Borders arrived at the Sheraton on September 12th, you were surprised to see him. Wouldn't it have been normal to inquire how he knew you were there, how he got there?

Judge HASTINGS. I'm not certain that I did not, but I have no memory of having done so. But I think I have tried to explain as best I can how he may have known.

First off, some time during the course of the day of the 10th, I did speak with him and advise him where I was going to stay. And I believe, as I indicated, that the possibility existed—Jesse McCrary doesn't say that he knows it, but Jesse McCrary says that he may have even spoken with him and advised where he was staying.

In addition to that, we talked with his law partner's home on that particular day that we were there, and it's not unlikely that a

person would call his law partner. And we called several other people around town, I did, that Bill Borders would know. So, no, sir, I don't think that there was anything uncustomary about his finding me there.

And, Senator Bond, you know, coincidences do occur. My former law partner, Zebedee Wright who is a judge now—I moved my hotel to the Guest Quarters the other day, and he showed up. And I didn't know he was coming to town, and I didn't know and still don't know how he found me.

Senator BOND. Judge, you testified very clearly back in 1980, I believe it was, when Mr. Pride was still incarcerated that he had asked that you raise money for him then, and you flatly turned him down.

Judge HASTINGS. Yes.

Senator BOND. Now, you testified here that some time in September or October 1981 you had a temporary change of heart. Why did you have that change of mind? What convinced you in September and/or October that maybe you should write letters as a Federal judge and solicit money? Which I think you're fairly clearly now is beyond the realm of propriety.

Judge HASTINGS. No question. Yes, sir. During the period that is being discussed, six, seven, eight months, however long, from March until such time as these letters came to fruition, Senator, repeatedly Borders made inquiry of me regarding help in that regard for Hemphill. We had conversations, I'm sure we had conversations that dealt with just that subject, the ethical constraints. And I so expressed that to Borders.

His view was that never mind about that; you know, nobody's going to bother you about it, or words to that effect, because you're working for a friend. And I so much as said to him at some point in time that I would make some phone calls. And I'll say this, Senator Bond: A friend in distress today, if I knew mutual friends unrelated to anything having to do with judicial duties, I don't see anything wrong with trying to help a friend financially.

And so those were the things that I considered, and I considered even sending the letter. I really did. And, obviously, I did not, and I'm very glad I did not for I would likely be here on equally serious charges had I done so.

Senator BOND. But you said, you just testified that, you know, if you're helping a friend it wouldn't be so bad.

Judge HASTINGS. Let me give you an example of that. I have had, as I'm sure the Senator has had, friends who have not had the modicum of success that I like to think that I've had, and a relative of theirs dies, and they don't have the wherewithal to bury that relative, calling four or five persons is not an uncustomary thing. I've done it before, and whether I'm a judge or if I'm a judge, I'll do it again, Senator.

Senator BOND. Now, you said, you testified just a few moments ago that the telephone conversation which we're all too familiar was designed to elicit some specificity so you could put that in the letters.

Judge HASTINGS. Yes, sir.

Senator BOND. So you could tell your friends how much help was needed for Mr. Pride. Why didn't you ask Mr. Borders what he had written down?

Judge HASTINGS. Yes. Because I thought that at some point in time he would advise me. And referring back to one other Senator's view with reference to that, I gathered that by that time I was beginning to retreat from the overall notion, at least in my mind as I look at it. I didn't ask him at that point in time, and I certainly know that I was not going to do it. As to whether or not I knew it that minute, I don't think so, Senator.

Senator BOND. Why were you—if you're beginning to back off, why did you call to get the information? What was the—why were you soliciting——

Judge HASTINGS. Because I thought that he would have the information. It's just that simple.

Senator BOND. But he didn't give you any information?

Judge HASTINGS. No, sir, he did not in this conversation, Senator.

Senator BOND. And you did not ask even what the preliminary figures were that he had received?

Judge HASTINGS. No, sir, I did not.

Senator BOND. Let me explore just one more item in the minute or two that I have left. Do you have any theories or any—I'd better not ask for theories. Do you have any grounds which you feel that Mr. Borders may have had some access to what was going on in your office, in your courtroom, knowing about the May 11th continuance, knowing about the October 6th order?

Judge HASTINGS. I'll say the same thing I said to Senator Durenberger. I think certain information could be accessed out by folk who had considerable ability to gain information. I don't want to lay anything on any Joe Nesline. I don't know what they were doing. I don't know what Bill Borders was doing.

The answer to your question, Senator Bond, is: If I had that proof, I'd put it right here on the table.

Senator BOND. Thank you, Judge.

Judge HASTINGS. Yes, sir.

The CHAIRMAN. Senator Kerrey.

Senator KERREY. Judge, let me follow on a question that was originally asked by Senator Rudman and just explored a bit by Senator Bond, and it has to do with that October 5th phone call. I've been troubled by it as well, by the circumstances of it.

If you say you were trying to get some additional financial information for those letters, why did you then mail letters? Why did you indicate——

Judge HASTINGS. I didn't mail them, Senator.

Senator KERREY. Well, you indicated in the line almost immediately following that you were going to mail them then to Columbia.

Judge HASTINGS. Yes, and that's when I did not, and I indicated earlier that I knew that I was not going to send them at a point in time, and that I would see Pride and Borders and have it out with Bill Borders about this.

Senator KERREY. But the phone call doesn't indicate that. The phone call, in the phone call, the immediate follow line is, after he indicated that he was going to be writing something down, is that

you were going to ship these letters off to Columbia, with no reference to, "Gee, I need to get the information before I"——

Judge HASTINGS. I understand.

Senator KERREY [continuing]. "Send the letters off."

Judge HASTINGS. I understand, Senator. And all I can tell you, that was an extraordinary day for me as well in terms of how busy I was. And either when this call was made, I did not intend to send those letters at that time, or all that I had in my mind was what Bill Borders was going to achieve in the way of financial understanding from Hemphill. And I am as troubled as you are, Senator, and I can't give you anything more than what the call is and what I was doing at that time.

Senator KERREY. But just so that you understand and for the purpose of the rest of these proceedings, I sense no hesitation in this conversation that——

Judge HASTINGS. That's right.

Senator KERREY [continuing]. Maybe you won't send the letters. I sense no desiring of any additional information before the letters are going to be shipped off.

Judge HASTINGS. Yes.

Senator KERREY. That's my sense of the conversation.

Judge HASTINGS. And that's mine, too, Senator.

Senator KERREY. Well, it doesn't seem to be.

Judge HASTINGS. Well, aside from the fact that all it was about was about finances in the final analysis. And what I'm telling you is, I don't have an exact memory as to when I was backing off from doing it. And I'm trying not to say that—by that time I very well could have been putting Borders on, but I don't have that as a memory. That's all I'm saying to you, Senator.

Senator KERREY. I just wanted to alert you to the fact that I see inconsistencies in answers to questions just given to Senator Rudman.

Judge HASTINGS. I understand.

Senator KERREY. And they're not satisfied.

Judge HASTINGS. I understand.

Senator KERREY. With your experience on the juvenile court and with juveniles, just for the purpose of my understanding, would you define for me the term "status offense"?

Judge HASTINGS. Yes. That's different than a juvenile offense. A status offense—we don't use that term in Florida, but that would be an offense for an incorrigible child or an ungovernable child in the State of Florida.

Status offense, as used in New Jersey, I believe, may very well carry a different meaning and go all the way to a criminal act by a child.

Senator KERREY. But you're explaining to a child, a juvenile, that there's going to be a consequence for their offense——

Judge HASTINGS. Sure.

Senator KERREY [continuing]. That's a result of their special status, are you not?

Judge HASTINGS. That is correct.

Senator KERREY. And, essentially, that's what we're dealing with here now. Would you agree? I mean——

Judge HASTINGS. I hadn't thought about anything like that, Senator Kerrey, but I can't agree with that—I mean I can't disagree with that. I apologize to the Senator.

Senator KERREY. Well, you know, it seems to me—and you perhaps could detect from some questions that I asked of earlier witnesses—that I'm concerned about your evaluation of the status as a Federal judge, what that status means, and what your conduct must be, then as a consequence of being a Federal judge and that actions taken as a Federal judge could precipitate penalties that you may not have if you were not a Federal judge. I'm trying to give you some idea of what I'm thinking about as I'm attempting not only to determine what the facts are, as I see them.

Judge HASTINGS. Yes, sir.

Senator KERREY. But also trying to determine, which is much more difficult, as to whether or not the facts warrant a vote of conviction. That's what I'm wrestling with at the moment.

Judge HASTINGS. Yes, sir.

Senator KERREY. Let me just go through a series of questions about Bill Borders. Do you believe that Bill Borders received a bribe as a result of the *Romano* decision?

Judge HASTINGS. Yes.

Senator KERREY. Do you believe that he conspired with Rico, who was someone who he thought was a Romano, in order to receive that bribe?

Judge HASTINGS. That's obvious.

Senator KERREY. Do you believe that he began this effort as early as February or March of that year?

Judge HASTINGS. I have no idea.

Senator KERREY. Do you believe that the conviction was justified, given the facts at hand?

Judge HASTINGS. I thought I spoke to that with reference to Senator Durenberger. It's been upheld all the way by the United States Supreme Court. Far be it from me to question it. The answer to your question is yes; I just thought the charges should have been something different, Senator.

Senator KERREY. I hear in your representation that the essence of your defense, for lack of a better word, is that your association with Borders was centered on Hemphill Pride. I mean, you said at one point, at one point in your description yesterday, you said there was practically no conversation that you had with Bill Borders that Hemphill Pride wasn't discussed. Now——

Judge HASTINGS. During this period of time.

Senator KERREY. During this period of time.

Judge HASTINGS. Yes, sir.

Senator KERREY. I will change it, then, to say that during this period of time that your relationship with Bill Borders was centered on Hemphill Pride.

Judge HASTINGS. Not really, because it also included matters pertaining to the National Bar Association, and I believe if you look at the record, you will find that. It also included matters with reference to other judges in the United States. It also included conversation about Bill Borders' tax problems and his concerns with reference to his own partners and association that they had.

But if I had to quantify for the Senator, then easily I would say that the largest portion of any conversation that we had at any time, indeed, centered around Hemphill Pride.

Senator KERREY. My problem, Judge, is that until the October 5th conversation is brought out, I don't see that.

Judge HASTINGS. That's because——

Senator KERREY. I don't——

Judge HASTINGS. That's because that's the only recorded conversation. Had you had all of them recorded, Senator, then you would have had a great deal more to draw from.

Senator KERREY. I also see no mention of it in the 302 report that was done.

Judge HASTINGS. Which 302? Of me, sir?

Senator KERREY. Yes.

Judge HASTINGS. I answered every question that Mr. Simmons asked me, and more, Senator. And perhaps it is. It's very poorly typed in terms of what was said, but I went through the 302 and gave a full explanation of things that were not in it for my own purposes. I turned that over to Professor Anderson very recently, but I've had it all along, with reference to the 302.

All I can tell you is I even volunteered information that is not in the 302. As to the specific, I agree with you that it's not there.

Senator KERREY. But that even makes it more difficult for me. If you volunteered information that wasn't asked you, I don't understand why you didn't volunteer information about Hemphill Pride and the relationship with Borders and why you had had this number of these contacts that were for the purpose of discussing Hemphill Pride.

Judge HASTINGS. Because that wasn't how the questions were being phrased, and I answered. And I think if you—what I would like to do is to get the 302 for the Senator and then to read everything that I think I said to Mr. Simmons. And I think you might find some of that, Senator.

Senator KERREY. I actually would be glad to do that, although I did read it again yesterday.

Judge HASTINGS. But you didn't read my explanation of it, Senator Kerrey. And Mr. Simmons didn't—we talked nearly three hours, Senator.

Senator KERREY. That, by the way, is not pivotal for me. I don't want to—you've indicated, and I think correctly, that you don't control what is written up in the 302.

Judge HASTINGS. No, sir.

Senator KERREY. And I do understand that, so I appreciate that there might be reasons why Hemphill Pride and your relationship with Borders been why you might have had some contact with him.

I am genuinely, as well, perplexed as to why there was panic in Washington. Why when you were notified by Hemphill Pride that Bill Borders had been arrested and it had something to do with you, why the panic?

Judge HASTINGS. Have you ever had a friend to be arrested and someone say it had something to do with you?

Senator KERREY. Yes.

Judge HASTINGS. And what did you do?

Senator KERREY. I did not panic because it didn't have anything to do with me.

Judge HASTINGS. What did you do?

Senator KERREY. I did not panic, Judge.

Judge HASTINGS. I didn't either in the sense that you've described it. I said I was afraid, and I've explained to you Senator, and I'll explain to you again. At that point in time, what was related to me was that it involved some kind of bribery in my courtroom. I had been around Borders for a protracted period of time, at interim periods, that this record reflects. And in addition to that, I had been with him that day. And as I indicated before, my instincts allowed that something was wrong, and I thought that it was serious.

Now, if you say panic, Senator Kerrey, I was as afraid about those circumstances and confused during that period of time. Now, how you and every one of these Senators and everybody else analyzes things, as we telescope on them, is from the perspective that what you would have done. It's what I did. Be it logical or illogical, be it rational or irrational, it's what I did or did not do that ought to be analyzed. And I shouldn't be placed in the position of having to act like Senator Kerrey would act or Senator Rudman would act or Patricia Williams act. I acted as I did.

And looking in retrospect, there isn't anything about this that allows that there could not be an inference that allows for suspicion of guilt. But there isn't anything about this as well in the explanation that we have given that does not allow for an inference of innocence. And that's all I'm saying to you, Senator.

Senator KERREY. My 10 minutes is up. We'll have a chance to come back and discuss this further.

Judge HASTINGS. Fine, Senator.

Senator KERREY. Because my observation is that there is some suspicion, and I'm trying to resolve that in my mind. That's all, Judge.

Judge HASTINGS. Fine. A jury did that once before, too, Senator.

The CHAIRMAN. Senator Gorton.

Senator GORTON. Judge Hastings, when and under what circumstances did you first meet Bill Borders?

Judge HASTINGS. It would have been through the National Bar Association, and at some particular function, and it would have been—if we used 1981 as the pivotal period, it would have been some time in 1964 or 1965 or thereabouts when I attended my first—whenever I attended my first or second National Bar Association meeting.

Senator GORTON. When you were a relatively new lawyer?

Judge HASTINGS. When I was a relatively new lawyer. Yes, sir.

Senator GORTON. In the period of time from that first meeting and when you became a State court judge, did you ever have any business or professional relationships with Bill Borders? Ever work on the same case, refer clients to one another?

Judge HASTINGS. Never, sir.

Senator GORTON. So during that period of time, before you became a judge, your associations with him were largely through a shared interest in and attendance at National Bar Association meetings or functions?

Judge HASTINGS. That, plus political undertakings as well.

Senator GORTON. That was the next part of my question.

Judge HASTINGS. Yes.

Senator GORTON. You were also political or ideological allies that worked on various civil rights and social causes together in that period of time?

Judge HASTINGS. Well, we didn't really work on civil rights or social causes, other than as the National Bar Association functions would be undertaken. But we worked in politics, particularly nationally, and a few local efforts we had mutual concerns about. And we worked in those efforts together.

Senator GORTON. And during that period of time before you became even a State court judge, did you begin to have some social relationships with Bill Borders, having dinner together, partying together, and the like?

Judge HASTINGS. Yes, sir. At some point, either in Florida or Washington, and other places around the country. But, Senator Gorton, again, unfortunately for me, the only two people or three people that come up often in these proceedings is Hemphill Pride, Bill Borders, and Al Hastings. Please, sir, know that dating all the way back to Ed Bell, who was an NBA president, O. T. Wells, Warren Dawson, Arthenia Joyner, Al Janita Scott, who happens to be a member, the young lady who was the first NBA president—there is a group that you might call a unique group, but I don't think is unique because I think others exist in the country where there are at least 10 or 12 of us who at any point in time we are in each other's areas or in the same area at the same time. We do favors; we have dinner; we socialize, and that has been going on for years. And it is not just Bill Borders and Al Hastings. It's more people than that. And I just use the core group. It really expands to easily 50 to 75 people that have that kind of attitude.

Senator GORTON. Understood, Judge Hastings, that there were other people in it, and it's only these two on whom we've been concentrating here. But, nonetheless, this was a cordial and a close relationship——

Judge HASTINGS. Oh, I don't—no question, Senator.

Senator GORTON. And that relationship, though it could no longer involve politics, continued with Bill Borders after you became a judge.

Judge HASTINGS. To the degree that we allowed that someone asks you about something. I believe when I was a State court judge that from time to time Bill Borders would ask my advice and/or opinion with reference to ongoing political undertakings. And I hope the Senator doesn't think that when a person becomes a judge that all politics ceases.

Senator GORTON. No, no. But the friendship, the social relationships, the meeting one another at least occasionally for dinner, continued after you became a judge.

Judge HASTINGS. Oh, indeed, Senator Gorton.

Senator GORTON. And it's your testimony here that in the last year of that relationship, before October 9th, the greatest bulk of your conversations or of your time together was spent discussing Mr. Pride, though there were other subjects—

Judge HASTINGS. Sure.

Senator GORTON [continuing]. Including the National Bar Association from time to time.

Now, is it not true, Judge Hastings, that through all of this long and elaborate inquiry, there have only been two persons who had firsthand knowledge of what took place in this connection insofar as it involved you and Mr. Borders, and that would be you and Bill Borders himself?

Judge HASTINGS. Isolated in that sense, there would only be two people that could be looked at in that sense. But I think then that would exclude William Dredge, Joe Nesline, the Romano brothers, Brother Moscato, William Dara, and countless other individuals that are out there somewhere.

Senator GORTON. Only two people know whether there was a guilty relationship between you and Mr. Borders. You are one of those, and Mr. Borders is the other; would that be correct?

Judge HASTINGS. No, sir. And the only reason I say that is I really don't know what William Dredge's role was with William Borders. I really don't know, and I don't believe you do either from the testimony, Senator.

Senator GORTON. Judge, you, of course, have been willing to testify at great length and to answer the same question phrased slightly differently over and over again. By the same token, Mr. Borders has never answered questions on this subject, I take it, has he?

Judge HASTINGS. Not to my knowledge, Senator.

Senator GORTON. Now, the other day, Mr. Borders appeared here but once again refused to answer our questions. But while he was still under oath during the course of his second appearance here, he read a detailed statement expressing his outrage at being called as a witness. At the heart of his objection was the explicit assertion, which he uttered not once but twice, that this committee was acting as a prosecutor in calling him as a witness. The obvious implication, to this Senator at least, was that he felt he was being called as a prosecution witness.

Judge Hastings, what reason do we have not to conclude that Mr. Borders was telling us, perhaps unconsciously but very clearly and under oath, that you were a conscious partner in his scheme, and that any testimony he might give would implicate you?

Judge HASTINGS. Senator, I think that's a well-phrased question, but I don't understand how you could come to just that conclusion.

First, let's start with the fact that I didn't see, hear, or read the statement, and you're reading it to me as it occurred, I'm sure, and accept all of that representation. So I'm seeing and hearing it for the first time.

The only reason that I can give you, Senator Gorton, is I know what I did and what I did not do. And I can't account for Borders' actions or inactions. I simply cannot. And I have told you to the best of my ability what I did and did not do, Senator.

Senator GORTON. Bill Borders refused to testify here when he could have helped you except insofar as he may unconsciously have done so in the course of that statement. And at least if not your closest friend, was a good and careful acquaintance—good and longtime acquaintance.

Judge HASTINGS. He was not my closest friend. I accept the Senator's next representation.

Senator GORTON. Hemphill Pride I take it, you have told us, was from when you were very young one of your closest friends——

Judge HASTINGS. Indeed.

Senator GORTON [continuing]. If not your closest friend.

Judge HASTINGS. Indeed, my best friend. I was his child's godfather, he was my child's godfather. He was my best at my second marriage. And through the years, we shared almost a brotherly—as much as I believe brothers share in the way of a relationship.

Senator GORTON. And yet Mr. Pride has testified in a fashion which was damaging to you, and while you bridled at the statement that he may have lied, you at least have said—you have certainly said that he testified erroneously.

Can you give us any explanation why these two people who have been so close to you through at least your career and your life both, you know, would either testify erroneously or leave you in the lurch when you really needed them?

Judge HASTINGS. People are selfish, Senator, and Hemphill Pride is one of the most selfish people on earth. Whatever Bill Borders has in the way of his interest that he feels that he's preserving, it has nothing to do with me, Senator. It's his own interest.

Insofar as Pride is concerned, I've expressed myself and, Senator, I was hurt by the fact that he surreptitiously recorded me. And I expressed that. I no longer have to concern myself with Hemphill Pride or Bill Borders. I revert to what I just said to you. In my heart of hearts, and in all of the memory that I've tried to recall here and in 1983 at the trial and all of the preparation during the eight-year period of time, I have told you the truth to the best of my ability.

And as far as Pride or Borders and what they do or what they don't do, I really, really can't give you an account of that, other than their own interests being advanced as they perceive their interests totally unrelated to me. And both of them are former friendships.

Senator GORTON. My 10 minutes is up, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator LIEBERMAN.

Judge HASTINGS. Mr. Chairman, I need to go to the restroom.

The CHAIRMAN. That's fine. We'll take a short recess and be back in 10 minutes. Yes, Representative Bryant?

Mr. BRYANT. Just as you announced the recess, we were notified of a vote. If we might have about 15 minutes——

The CHAIRMAN. We will certainly wait until the House managers return. We will stand in recess.

[Recess.]

The CHAIRMAN. The committee will come to order again.

If Judge Hastings is still nearby, we'll proceed with additional questions.

Mr. BARON. Mr. Chairman, respectfully, it's my understanding that the managers would prefer that the committee wait until they return.

The CHAIRMAN. Are they at another vote? There's Representative Bryant right there.

Mr. BARON. OK, fine.

Mr. BRYANT. We had two votes.

The CHAIRMAN. There is Judge Hastings. All right. We've got a quorum.

Judge HASTINGS. Mr. Chairman, that was the first time the television monitor didn't come on in the little room back there. When it came on, you all were on. I apologize.

The CHAIRMAN. All right.

Mr. BRYANT. Mr. Chairman, we had two votes. That explains our lengthy——

The CHAIRMAN. We had one ourselves, so we've just gotten a quorum back together. I believe Senator Gorton had finished his questions.

Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman.

Judge Hastings?

Judge HASTINGS. Yes, sir?

Senator LIEBERMAN. I've been thinking, as we come to the end of this part of the process, of a quote that I once read from an author who said, "I don't enjoy writing. I enjoy having written." And I would suggest that I'm beginning to feel that way about this experience. I can't say that this has been a pleasure, for any of us, really, but I think when we look back at it, we'll feel some satisfaction at having dispatched an important constitutional responsibility. And if I may just pick up a moment from what I think Senator Pryor said quote eloquently, it's been an outstanding experience for me as a freshman Senator and as a lawyer, both to hear these cases argued, to see you present yourself very well, the cases argued well, and to serve with and to get to know better a rather extraordinary group of colleagues that I have here.

It gets no easier as we come to the final stages of this part of the process because we are called on, this committee is called on explicitly by the charter that created us to summarize the evidence and present it to the full Senate. But I think implicitly we're called on to help counsel our colleagues, having sat through these four weeks now, as to what the appropriate vote is. And in that regard, I want to draw from Senator Durenberger, not so much to ask you again, but to ask your counsel and counsel for the House—perhaps in closing statements, but certainly in whatever briefs or later papers they will present to us—to address the question of what the appropriate standard of proof here is.

All of us agree there's little or no direct evidence. There is a fair amount of what would be described as circumstantial evidence. I think all of us agree, certainly history tells us, that this is not a criminal proceeding. This is an impeachment process—unique, quasi-judicial, quasi-political.—and I, for one, as I sift through what we've heard here for four weeks, would benefit from the counsel of both counsels.

Secondly, we've heard conversation here this morning again about the two lives of William Borders. Here's a man who literally walked in the halls of the White House, a Government lawyer recognized on a list of passengers on an airplane as a prominent Washington, DC, attorney, and yet by virtue of all we've heard and the decision of a court, a criminal.

As you suggested, and a few others on the panel did, we've each in our own lives known people like that. I've known a series of law-

yers who I was shocked when I discovered—as you said yourself—that they were involved in corruption of one kind or another, misuse of client funds. In most of those cases that I've known, at least in Connecticut, those individuals have had personal problems. And I wanted to ask you, from the best of your knowledge of William Borders, did he have a gambling problem? Did he gamble on sports events? Did he gamble to excess?

Judge HASTINGS. I heard that offered here, and it was the first time I heard it. I never saw him gamble, Senator. The only time that I know that the two of us would have been in a place where I would have had an opportunity to observe him gamble in a casino-type facility would have been way before these events at a mid-winter meeting of the National Bar Association in the Bahamas. And I know that I went to the casino and played, but I don't believe that William Borders did.

Now, insofar as his habits in that regard, the only thing that I can suggest that I remember that might offer that kind of suggestion would be that it did seem to me that he would have large sums of money that he enjoyed showing from time to time. But as to any——

Senator LIEBERMAN. Cash.

Judge HASTINGS. Cash.

Senator LIEBERMAN. Did he carry large sums of cash?

Judge HASTINGS. Yes. And my grandpapa was like that. He didn't carry large sums because he never had large sums, but he liked his money and he would count it. And while I never saw Borders go through that, it seemed that he liked to pick up checks and things of that kind.

Senator LIEBERMAN. So from your personal knowledge——

Judge HASTINGS. But I never saw him gamble, Senator.

Senator LIEBERMAN. Never saw him gamble.

Judge HASTINGS. No, sir.

Senator LIEBERMAN. And you don't know that he had a gambling problem?

Judge HASTINGS. No, sir, I do not know that.

Senator LIEBERMAN. How about the other cause that I've found repeatedly for this kind of problem in Connecticut when it's occurred, and that is substance abuse? Did you have any reason to believe that he had a drug or alcohol problem?

Judge HASTINGS. I really don't believe that that would be the case. I know that he drank, but I don't believe that he drank as much as I did. And I have no knowledge of him using any other substance at any point in time.

Senator LIEBERMAN. Respectfully, I feel that I have to ask you, and I do it with respect and in the interest of a full record. Do you gamble?

Judge HASTINGS. I have in my lifetime. I go to the racetrack. Even now, I will go twice a year to the harness racetrack. I go once a year to the dog racetrack. I don't go to what I refer to as the flats very often because of the difficulty that you have with people that you run into. And over the years, I've drawn away from going to a racetrack on a regular basis. I have no habit. I've never lost any large sums of money. I've never won any large sums of money.

Senator LIEBERMAN. Not in the habit of gambling of substantial sums of money?

Judge HASTINGS. With the exception of when I—before I became a Federal judge, Senator, there are about eight people that I know that we have $50 takeout in poker that I like to play with, and I have done that. I don't any more. And, more specifically, I didn't have very much time after I got to be a Federal judge, before these problems started, and I certainly don't have an opportunity to be with those friends because they play on Friday night and I'm gone on Friday night.

Senator LIEBERMAN. I understand. And let me ask you also for the sake of the record about substance abuse, drug or alcohol use.

Judge HASTINGS. I have in my lifetime, Senator—I'm now 52 years old, and beginning at age 42, I began to retreat from alcohol, retreat from the standpoint of what I did between 22 and 42. Between 22 and 42—and I don't mean it just to inject humor, but I probably drank enough liquor to float the Queen Mary during that period of time. I have never experimented with or used any other substance at all, cocaine or heroin. Those are things that I just simply—I truly believe that they are harmful, and, therefore, there would be no reason. But until age 42, I probably at least every weekend drank more than I should have.

Senator LIEBERMAN. But during the period of time covered by these events, you would say that that was not the case?

Judge HASTINGS. I drink, but not to that excess that I did for years.

Senator LIEBERMAN. I appreciate your answers.

Let me go now to the two—a lot of coincidences that you've been questioned about with phone calls. There are two events that trouble me, and I want to go over them with you again. Those are the dinner at the Fontainebleau Hotel and the October 5th conversation. I've got just a couple of minutes in this round. I want to start with the dinner at the Fontainebleau Hotel.

I believe you testified that there were two occasions after September 12th when Mr. Borders indicated to you that he was going to be at the Fontainebleau September 16th at 8:00.

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. One was in the car on the way to the airport on Sunday morning, September——

Judge HASTINGS. Some time during the course of those events. I don't remember that it was in the car, Senator.

Senator LIEBERMAN. OK. I want you to, again, to the best of your recollection, indicate to me as specifically as possible what he told you.

Judge HASTINGS. That he would be at the main dining room at 8:00 p.m., at the Fontainebleau, and that we could get together and socialize. He didn't say anything about eating, and I've not pointed that out. But he didn't say that. I knew that I was going to eat, but he just said the main dining room at the Fontainebleau.

Then when I came back through Washington and talked with him on the telephone was the second time that he reiterated that certainly he would be there.

Senator LIEBERMAN. Let me come back because I want to get to that. In that first conversation in the car——

Judge HASTINGS. I'm not certain that it was in the car.

Senator LIEBERMAN. Not relevant. OK. Sunday morning. What was your understanding of what his plans were? Did you assume that he was going to be in Florida on business, for instance, and then was going to just come by?

Judge HASTINGS. I didn't question it, Senator, any more than I hadn't at any other point in time or he questioned me when I say to meet me at a certain place. That had happened before, and not only with Bill Borders but with lots of other people. But as it pertains to Bill Borders, I didn't question it. He said he was going to be there.

I now know that he had sort of a frequent habit of going to the Fontainebleau. I did not know that then other than the one time that I had dropped him off there.

Senator LIEBERMAN. Did you assume when you heard, insofar as you can recollect, that he would be with someone else on that evening of the 16th?

Judge HASTINGS. It would be not uncustomary. I really believe that he said something about being with someone else, and I would have taken for granted that it would have been a lady. But there are times when I would not have made that assumption.

I don't have a distinct memory of the exact conversation, but I did assume that there was someone else. As a matter of fact, when I went looking for him and got back to the table, what I said was that I was looking for friends from D.C., is what I said.

Senator LIEBERMAN. I've reached my limit. I want to come back to it in the next round. Thank you.

The CHAIRMAN. Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

Judge Hastings, I too am a freshman in this body, and not being trained in the disciplines of law—and I'm the auctioneer that Senator Pryor alluded to——

Senator PRYOR. I said that as a great compliment.

Senator BURNS. And I appreciate that. And I do also want to associate myself with his statement in regards to the chairman and our vice chairman in these proceedings. It's been very enlightening to me. And as I write down notes and things and events of these proceedings along, I sometimes have problems, as you have expressed, in memory. I have a fantastic memory, but it's short. So I have to go back and review these things.

I have a couple of troubled dates that trouble me no matter how you lay them out, and I just want to ask you: Through your years of association—and I mean through either your professional or through your social life with Mr. Borders—could you give this committee any idea on the contacts that you had with Mr. Borders prior to, let's say, December 1980? I mean, did you visit weekly or monthly, or could you give us some idea?

Judge HASTINGS. Senator, it would depend upon the year and the events of that particular year. To answer you, if I had to categorize the times that I was with him, I would best say casually. I could almost say infrequently, although here it has been made to appear as if there is a great frequency.

When events would occur, for example, during this period, as Senator Rudman put the question with reference to the May

period, in addition to his involvement with his perceived responsibilities in selecting judges and being removed from that position, I was also pursuing him and other members of the Board of Governors of the National Bar Association to try and arrange for either President Carter or Attorney General Bell to be at a dinner. And I spent a lot of time on that.

I only mention that to say that it would be sporadic, Senator Burns. There would be times that I would see him more than other times, but there is absolutely nothing unusual about my visits with him in terms of the number of times any more than it would be any of the other individuals in that clique that I have identified.

Most of our contacts would have been associated with the two major events of the National Bar Association and the Judicial Council of the National Bar Association.

Senator BURNS. And Mr. Borders and you go back to, say, 1961, and it appears here that Mr. Borders had risen to quite a level of prominence, both in terms of the National Bar Association and in terms of his political party. Would you say that the reason of his ascension to prominence was based on primarily his activities within his political party, or was it that he had an unusual talent within his profession of law?

Judge HASTINGS. If I had to use those two categories only, I would choose his rising in politics more than in his practice of law. Bill Borders practiced law with a gentleman who taught at Howard University named James Cobb. Both of them grew up here in the District of Columbia, and that's a third facet, Senator, that I would allow respectfully that you include in his rise.

The District of Columbia, as are other places, is a place where once you have relationships they tend to grow, and people come in and out of them. But you can stay on the money as long as you're doing things within the framework of those relationships. I'm sorry if I took you far afield. I believe his politics was better than his ability as a lawyer.

Senator BURNS. Let's get back to the 9th. The reason that has been given through testimony here for coming to Washington, DC, was a reception to honor William Borders that evening.

Judge HASTINGS. Yes, sir.

Senator BURNS. And, of course, we're all familiar with the events of that day. The event that was scheduled that evening, did the event come off?

Judge HASTINGS. My understanding is that it did, Senator, and obviously there was a pall over the event. Everybody was genuinely concerned about Borders, and at that time I'm sure, based on subsequent conversations, a lot of people were genuinely concerned about me. So it wasn't a fun event from my understanding, and I've spoken with, I would imagine, at least 15 people that did go forward.

Senator BURNS. How many people were invited to that event, do you know?

Judge HASTINGS. I don't know the exact number, but the boat was supposed to be—whichever one of the boats it was, it was supposed to be a sellout. And there were persons from here as well as around the country that were supposed to attend, Senator Burns.

Senator BURNS. You see, what troubles me—and even though the guest of honor ran into some difficulties, to say the least—was your actions, I guess, after you learned of Mr. Borders' arrest; that the primary reason that you were in this town was to attend that event.

Judge HASTINGS. Yes, sir.

Senator BURNS. And I would assume that the people that would attend this event are probably very prominent people in the national—and they're very important people to you and very important people to the National Bar Association.

Judge HASTINGS. Right.

Senator BURNS. Would that be correct?

Judge HASTINGS. Oh, indeed.

Senator BURNS. I just have problems of fitting together your actions of why you were in town, to attend that, and if there was no problems as far as you were concerned and your connection with Mr. Borders, why you wouldn't go ahead and attend that event.

Judge HASTINGS. It's because the first information that came to me, Senator, was that he had been arrested in connection with bribery, and the words were in my courtroom. And I had been with Bill Borders during the course of that particular day and, as I've indicated, at other points in time. And all of that came to mind and caused me to be very wary of what was going on.

I don't believe, Senator, that anybody else was mentioned. If I were to use, for example, O. T. Wells from New York City who came and, I believe, went to the boat ride, O. T. Wells went on to the boat ride because it was not mentioned that there was anything involving O. T. Wells and Bill Borders. My name was mentioned, and my name was being used. And that's why it caused me perhaps to have more concern than other persons.

And as I've said, looking in retrospect, I think that all of my actions on that day allow, Senator, for an inference of suspicion and/or even guilt if one wishes to do that. But I believe my explanations are plausible ones, and they are the truth.

Senator BURNS. Thank you. We're nearing the noon hour, and I have never missed meal, nor do I plan to. [Laughter.]

I want to say that this panel, we take our job awfully serious here. We know and understand that this is not a fun job.

Judge HASTINGS. Yes, sir.

Senator BURNS. But it is a necessary one. And thank you very much for being candid with us.

That concludes my questioning, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Burns.

Let me ask a few additional questions.

Judge HASTINGS. Yes, Mr. Chairman.

The CHAIRMAN. Judge, I'll go back to an issue I raised when I asked you some questions yesterday. The main charge here—we have a lot of Articles of impeachment, but the main charge is that you conspired with William Borders to solicit a bribe from two people who were defendants in your court. That's the main charge. It's clear, I think, based on this record, based on the previous trial, that Borders, in fact, did solicit that bribe and he did make an effort to contact those individuals to obtain that bribe.

The only way he was able to do that was by having knowledge about the progress of their case in your court, the timing of orders coming up for hearing and the way the case was proceeding in your court, not the fact that it was there but the way it was proceeding.

Let me just review briefly some of the knowledge which he had based on my understanding of the record. In March, at least the testimony of Mr. Dredge—and I don't really know that this is refuted—is that at that time he was approached by Borders to ask if he knew about the Romanos and their difficulties. So that's March of 1981.

In April, again, there were several contacts, at least testified to by Dredge, where he was encouraging Dredge to contact Romano, to see if they were interested in any kind of deal with regard to their case.

In May, again, the testimony of Dredge is that Borders told him that you, Judge Hastings, would continue the sentencing that was scheduled for May 11th. Now, the evidence is, of course, that that was continued, not on your initiation, but in response to the motion that was filed by Neal Sonnett.

Jumping then to September, the conversation on the 12th of September between Borders and Rico indicates that Borders knew that property had been forfeited, that there was an order—there would be an order to return that property, that there was a substantial amount of property involved, that the Romanos would need to file a motion for mitigation. So that indicated some specific knowledge about what was pending in that case against the Romanos.

On the 19th, Borders promised Rico that an order regarding this forfeiture would come out within 10 days—and I'm well aware of the testimony about the questions about when it actually did come out, and the fact that the 10 days was not met. But it again indicates knowledge by Borders about the fact that an order was going to issue on this forfeiture.

On the 5th of October, Borders told Rico that the order went out probably today or first thing in the morning. In fact, the order went out I guess on the 6th.

That's a series of indications that Borders knew a lot about this *Romano* case as it was proceeding; at least that's my interpretation of it. He knew about the case. When you look at where he could have gotten that information, he could have gotten it from you. He could have gotten it from Jeffrey Miller, your clerk. He could have gotten it from Betty Williams, your secretary. He could have gotten it from Marilyn Carter, at least part of it. I guess she was not there for all of that period, but part of the period.

The other evidence is that there were frequent and continuous contacts between you and Mr. Borders over this period, about 22 phone calls or efforts to make communication on the phone, and several businesses. There were 12 calls where it appears that you actually talked as opposed to leaving messages based on the best I can reconstruct at this point.

So of all the people who could have given him that information about the ongoing progress of the *Romano* case, based on what's been presented to us, you're the only one who was talking to him. Nobody else—Jeffrey Miller wasn't talking to him, Betty Williams

wasn't talking to him, Marilyn Carter wasn't talking to him. I don't know who might have given him the information about the progress of the case if you did not. Your testimony is to us that you never talked to him about the *Romano* case.

Now, it seems to me that that's a major unresolved issue or major problem in our ability to believe your case. How do we explain his knowledge about the ongoing progress of that case? If, in fact, there were examples where he was asking you casually, "How is that *Romano* case doing? You know, I know those guys are famous, and I'd be interested in just knowing how it's going," or if he were to call your clerk or if he were to call your secretary and say "I have a friend who's sort of interested in the progress of that case; just tell me what you can publicly." None of this is—or some of it—but a lot of this is information a person could have gotten if they had called your office and said, "When is that hearing going to be on the *Romano* case," or something. That's not secret information. You would tell him.

But there's no evidence that anybody did check into it. So how do you suggest we resolve that problem?

Judge HASTINGS. Senator, I meant no impertinence as I was writing as you were speaking. I was trying to be in a position to respond as best I could.

I think what continues to happen is that it is thought that I can dispel all of these inferences, and I can only relate as best I can the facts. Let me see can I help you, Mr. Chairman, and the other Senators as I perceive these facts.

For example, the calling of the clerks. You said that if that had occurred, then that might lend at least a tint of feasibility to another method of his having learned. I daresay that the Senator has not heard the kind of lecture that I give to my clerks and the times that I have gotten on them about things lying around the office. And we could call just about all of them; the most available one would be Charlester Williams, who I believe could relate specifics about me getting angry about things in the office.

Now, I have chosen not to chastise members of my staff publicly, and I'm trying as best I can to assure you that I don't believe that any of them told anybody anything. But as to whether or not someone could walk in that office and learn certain information at a given time, I think that that was a distinct possibility.

Now, as to whether or not William Borders called, I don't think, Senator, that you can draw an immediate inference that he only called and spoke with me at my office, even though others, I believe, did not know him. It is not that everybody says that "I'm calling about an order." We get newspaper inquiries, television inquiries, bar journals, all sorts of people that call when something is developing in an interesting manner within a United States District Court judge's office. And it is not only my office. It's all of them. So to call regarding, "Is the order out? When is the judge going to sign an order?" and everybody doesn't say, "This is Al Hastings calling and I need that information."——

Now, please, even though all of it is not in the record, Judge King had a lawsuit involving the Romanos; I had a civil matter arising in bankruptcy. And believe me, Senator, even though Marilyn may not have a memory of all of the calls, if you put it in con-

text, if you take Marilyn and Betty, and then if you take Jeff, and if we were to call Alan, and if we took the interns, I guarantee you you will find that there were a substantial number of calls concerning the *Romano* order in and or around that period.

I want to move hastily to the other things. Twelve calls where we talked is what the Senator said. And it would have to be 12 calls identified at specific periods, and I believe Vice Chairman Specter was concerned on yesterday to know specifics regarding those particular areas.

Now, I think I've given a fair explanation of other things that Borders and I were talking about from time to time during many of the events in the master chronology of the House managers and in our chronology of these events. So to say that 12 calls where we talked, I believe the Senator would find that some of those calls may have been one minute. Some of them may have been four minutes. I don't know the length of them all. I believe the Senator may have that information. I do not have it in my head. But the time would make a difference, and it also would be that what happened is Borders either called or I called him and somebody talked for a minute.

Now, I want to make it clear. I'm not denying ever having talked with this man and during this period of time frequently. But now I want to go to the March period that the Senator asked about.

First off, Senator, I don't believe William Dredge the way some people want to believe William Dredge. I want to talk about that a minute, and I think I'm entitled to. William Dredge did not tell the same story all of the time. And I urge upon you, Mr. Chairman, and your colleagues to please examine all of the things that this man said and the times that he said it.

Let me move to one time period which points out his incredulity very clearly, and leaving all of the inferences regarding my incredulity intact. How could William Dredge, sitting in a Federal prison on the day of the 10th when he—and that's May—on that particular day and he says that William Borders talked to him? Now, I think it's unfathomable that that occurred. I think the record reflects what did occur.

What did occur is doubtless William Dredge talked with his wife, and doubtless his wife talked with William Borders. It is doubtless, in my mind, at least, that William Borders talked with Jesse McCrary and asked Jesse McCrary to visit with William Dredge. Please recall the facts. William Dredge did not get out of prison until the day of the 11th. And that is the day that Neal Sonnett sought the continuance. There's absolutely no way on earth, unless, if you wish to draw that kind of inference, Dredge when permitted his usual one phone call called William Borders. If that is an inference, then in fairness to me somebody should have been crawling over the records and, if they were not FTS records, to try to find where that call occurred.

Another thing that you're not doing, Senator, is you're not putting in context William Borders' awesome ability, it does appear, to machinate phone call situations. Senator Pryor has had, I believe, a legitimate concern regarding the April 9th use of the telephone by me as it does appear that I used the telephone on that date. But what about William Borders? This guy must have carried around a

Brink's truck full of change if you listen to all of what goes on with reference to his machinations.

I believe that Mr. Chisholm had no ax to grind here. I don't know Andy that well, and I don't know what his and Borders' contact was. But he set up with him phone machinations along those lines.

What I'm getting at, the man must have had a credit card, and all of those records aren't here. And you must know, Mr. Chairman, that we didn't have all of the records for every period of time that is within the framework of this context that William Borders might have been calling other people other than Al Hastings, and Al Hastings—or, conversely, if you will.

Now, then, I don't believe that William Borders met William Dredge in March. Only one of two things could have occurred: either knew him a long time, as Dredge has said at one point in time, or he met him some time as he said—everybody says that your best memory is your freshest memory from the time of the event. Well, when Dredge started talking about this thing, he was not talking about the well-rehearsed March period where he allegedly met William Borders.

Now, you say that in September Borders told Rico about you've lost some property. By that time, that was a matter of public record. The Hollywood Sun Tattler had recited it. I know that paper, and I do know that a small article appeared in the Fort Lauderdale news that was brought to my attention. I don't know about any others, but I believe there would have been other reports in that regard.

Moving hastily, if I may, Mr. Chairman, to that particular period in time, the developments in the circuit, albeit not necessarily known by everybody, anybody that wanted to follow that could have. And I've left out a scenario for you, the awesome presence of Joe Nesline in these proceedings and his connection with William Borders. That has never been fully explored, and I've tried and so has everybody else, I believe, that has investigated this matter. But I'm left to the bare bones here of nothing more than what I have to say with reference to Borders and whatever investigatory undertakings have been ongoing.

Now, I do consider it to be extremely crucial that in that September 19th conversation they said that the order would be out in 10 days, and it was not. And that's important. That's more than important, and crucial. And give me some benefit of doubt with reference to if I was playing footsie with these people, most assuredly I would be meticulous with reference to time. And if not, why not?

It was easy for me to get Jeffrey to do the order. He worked for me. I could have asked him to stay there until he dropped working if I had wanted to, and I didn't. So that then becomes critical.

So when you put all of that in context, I think that one could easily begin to speculate and call and say when the order is going to be out, and there hasn't been a correct inference drawn with reference to the number of people, not only about the *Romano* order, but repeatedly.

One of the things that the person that fights the phone in my office has to do is to be delicate with people because people call about everything. People are litigious in this country and in south

Florida, and they call all the time. We get off-the-wall calls from people who we don't have any idea they'd have any interest in particular litigation. And they come up and ask about it.

So there are a variety of ways. I include for you the fact that the courthouse isn't as secure, Senator Bingaman, as people would like to think it is. And you all ignore—I mean, don't take my word for it. Call Judge Eugene Spellman, and ask him if he was concerned, as were other judges. Call Judge Joe Eden, and ask him when he and I had a personal conversation about something as simple as a court reporter at that time getting her telephone and using it inappropriately, and he wanted to tell me. He asked me to meet him in the courtyard of the courthouse rather than talk about it on the telephone.

Why am I left to all of this suspicion when everybody else suffers the same thing? And that's all I'm saying. I'm not trying to put it on anybody else. I'll accept all of what has been said. But we've met that challenge, Senator Bingaman. And we didn't only meet it at the trial; we met it at every level. And I daresay, sir, in spite of the inferences that one might draw, I think we've met it here.

The CHAIRMAN. We are to the hour of 12:00 o'clock. Senator Specter, I'm sure, has questions also. Why don't we recess now until 1:30, at which time we will continue with additional questions.

Judge HASTINGS. Thank you, Mr. Chairman.

[Whereupon, at 12:02 p.m., the committee recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. Judge, if you would be seated, we'll just handle a couple of procedural matters here before we continue with questioning.

The House managers had previously requested that a subpoena be issued for Mr. Charlester Williams as a rebuttal witness. That subpoena was served, and Mr. Williams appeared here this morning. It's my understanding he has remained here subject to that subpoena.

Do I understand now that the House does not intend to call Mr. Williams? Is that correct?

Mr. BRYANT. Based on Judge Hastings' testimony of yesterday afternoon, we see no need to call him any longer.

The CHAIRMAN. And does respondent wish an opportunity to call Mr. Williams in any rebuttal?

Mr. ANDERSON. Based on the House's representation that it's calling no rebuttal witnesses, we don't think we have a surrebuttal.

The CHAIRMAN. It would be my intention at this time to release Mr. Williams from the subpoena and allow him to go about his business, unless anybody raises objection.

OK. We will do that. He is released from the subpoena.

There are several evidentiary matters pending before the committee. Let me just go through those very quickly here. First, the House managers have requested that they be permitted to make reference to polygraph evidence which the committee has previously excluded. Their request was made in light of the fact that a doc-

ument admitted through the respondent makes reference to that evidence. They have asked that they now be permitted to refer to the evidence both through the examination of witnesses and in argument. The committee has determined that it will adhere to its prior ruling and will not permit questioning or argument concerning polygraph evidence. The document in question will remain in evidence as it was introduced by respondent.

Second, the House has submitted a proffer to the committee of the polygraph evidence which it had wished to have admitted in these proceedings, as well as an explanation of the purpose for which it sought to have the evidence admitted. The respondent has filed a motion to strike that proffer. The motion to strike the proffer is denied. As previously ruled, no further polygraph evidence will be admitted. Both the proffer and the motion to strike will be included in the materials which will be reported to the Senate at the conclusion of these proceedings.

I believe those are the only procedural matters that we had. We still have some additional matters we will deal with when we conclude the testimony of Judge Hastings.

Senator Specter is next to ask questions.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

Judge Hastings, there has been a good bit of discussion about these letters which you say you had prepared on the day of October 5th——

Judge HASTINGS. That is correct.

The VICE CHAIRMAN [continuing]. Writing for help for Mr. Pride.

Judge HASTINGS. Yes, sir.

The VICE CHAIRMAN. And the question has boiled down to another issue of circumstantial evidence as to whether these letters were, in fact, written as you have represented or whether they are an after-the-fact contrivance to try to explain this telephone conversation on October 5th. And this is a question which will have to be decided. It's an important question in the matter, and it turns on circumstantial evidence.

The question that I have for you turns on a number of the facts here. You have testified that you were very busy on October 5th, and you've given the details of the schedule. And in response to a question from Senator Kerrey a few hours ago, you said that it was "an extraordinary day on how busy I was." So the question arises as to finding the time to write these letters which are perfectly written; not a cross-out, not an interdelineation, not a change, perfectly written.

Then you didn't send them, after writing them out carefully and after having a series of telephone calls and a conversation at 5:12 on that afternoon. Then you say that you were going to await a meeting with Mr. Borders and Mr. Pride before bringing the subject up again. And you met with all three of them for a period of time on the morning of October 9th but never mentioned the letters. Then you were with Mr. Pride later and never mentioned the letters. You were with Mr. Borders later and never mentioned the letters. And as I say, part of the time you were with both of them, all three, which would meet your requirements for awaiting an event when you were all three together.

How do you explain that very strong set of circumstantial evidence which suggests that the letters were written after the fact?

Judge HASTINGS. Easily, Senator. Let's start with the last part of your question.

When I was with both of them in Hemphill Pride's room shortly after arriving at the L'Enfant Plaza Hotel, when the door was open, first Shirley—Mr. Pride's wife—had to wait to get to the door because evidently she was not properly robed. When she did come to the door and we went inside, Hemphill was shaving and had a towel around him. We waited a few moments for him to come out, and at each instance I was more concerned about seeing Elliott, who was growing, and teasing with him. And I told the committee before, I wasn't feeling well, and I drank some of the grapefruit juice.

Hemphill asked me to go shopping with him, and I indicated to him that I would not. There was no opportunity, really, to begin that kind of discussion, and there would have been plenty of opportunity later for me to speak with both of them.

Concerning the events of the day of October 5th when the letters were drafted, Senator, please be assured that every day that we are on the bench is a busy one. And, Senator Specter, I don't mean at all to be impertinent, and most respectfully, I've watched you work while these proceedings have been going on. And I believe that I'm capable of doing the exact thing that I have seen you do, as well as other Senators. There are other things going on other than just this particular matter.

The VICE CHAIRMAN. You are free to examine all my documents, Judge Hastings, and you will not find six pieces of paper, or one piece of paper——

Judge HASTINGS. That would be my belief——

The VICE CHAIRMAN [continuing]. Which—may I finish please?

Judge HASTINGS. Of course, you may.

The VICE CHAIRMAN. Thank you. Where I have gone through that many pieces of paper and have written perfectly without an interdelineation, without a strikeover, or without a correction.

Judge HASTINGS. Right. So then——

The VICE CHAIRMAN. So when you refer to my papers, bear two things in mind. Number one, this is not a proceeding against me. And bear the second fact in mind that I would invite you, since you brought it up, to take a look at all my papers.

How do you explain, getting down to the point you just raised, that you have six pieces of paper, and they're perfectly written out, not suggesting that a man is busy at trial, listening to some testimony, being distracted, moving to his office to make telephone calls, but not a strikeout, not an interdelineation, just perfect script?

Judge HASTINGS. I've done it so many times, Senator. And if I have that ability, then I should think it should be a credit to me. But, please, sir, understand. In anticipation of your asking that question, first, Senator, I apologize to you. I didn't have reference to you writing anything. I merely had reference to the fact that all of us, while proceedings are going on, do work. And I don't believe that that's a fiction. I think that's reality.

But beyond that, sir, I've brought with me for you—I don't necessarily need it offered as an exhibit—matters that I looked at last evening that I pulled from my files on the day before I came here. They're germane to these proceedings only in the sense that they are work products of mine. One or two of them have, as you say, mark-overs or strikeovers. But a lot of it does not, Senator, and just to satisfy you, and you alone, I'd like for you to have them to review.

Now, I also would invite you to be able to look at all of my papers. And if you and I could leave these proceedings and go to my house, I could find countless six pages written on both sides. I could find 15 pages where I did not make some mistakes, and I could find others where I did, Senator.

The VICE CHAIRMAN. Just leave the papers with the clerk, and I will review them all.

Judge HASTINGS. Most assuredly.

The VICE CHAIRMAN. Judge Hastings, I have a great many questions to ask you on this sequence, but we started at 2:02 and the first question took eight minutes. It's now 2:10. So let me come right to the next to the bottom line.

In mid-February of 1982, there was a requirement for reciprocal disclosure, and you did not disclose these papers. Your attorney, Joel Hirschhorn, who represented you from January 12th 1982 to March 2nd 1982, never saw these papers. You did not produce these papers until December 1982, much later.

But coming to the very bottom line, you have the trial of William Borders, and there was a great deal of interest which you had in seeing Mr. Borders acquitted.

Judge HASTINGS. I don't understand that——

The VICE CHAIRMAN. Well, I'm coming——

Judge HASTINGS. I don't accept that representation.

The VICE CHAIRMAN. I'm coming to a question. I'm coming to a question.

Judge HASTINGS. All right.

The VICE CHAIRMAN. We can discuss my version or my view of your interest in having him acquitted, and we can discuss what other duty you might have had to produce the letters. But he was tried in March 1982, and there was a big point in the Borders trial about this October 5th telephone conversation which these reported letters very neatly fit hand-in-glove. And in the closing argument, the attorney for the prosecution made this argument, quote: "On March 29, 1981, I submit to you, ladies and gentlemen, if there were letters in this case that Alcee Hastings had drafted, that explained this conversation in an innocent way, you would have seen those letters introduced by the defendant. There are no letters. There's no coincidence."

Now, my question to you: If these letters had, in fact, existed on October 5, 1981 and had existed when Mr. Borders was on trial, didn't you have a duty to make them available to Mr. Borders' attorney, whom you testified you had conferred with, if, in fact, they did exist, had existed?

Judge HASTINGS. Sure. And I think if you were to review some of the interrogation of John Shorter, who was Mr. Borders' attorney, you will find that in one of the meetings that I had with John, I

had with me the letters, and he said he saw yellow papers, and he had no interest in it. And he believed that they may be these particular letters, but he didn't see them. So when you discussed it with him——

The VICE CHAIRMAN. All right. Now——

Judge HASTINGS. Senator, will you let me finish?

When I discussed it with him, the simple fact of the matter is he indicated no interest.

Now, I want to clear up one other thing. I had no interest in any acquittal of William Borders. What I had an interest in was trying to learn as much information as I could in preparing for my own trial. I had no responsibility to do anything. Borders and I were severed at that time, Senator Specter, and I was under no duty to perform any function in his trial at that point. I presented it to his lawyer in kind. He said he was not interested.

In short, what William Borders did was call a slow guilty plea.

The VICE CHAIRMAN. Are you making a representation to this committee that, in fact, you offered these letters to Mr. Shorter, the attorney for Mr. Borders, in advance of the trial——

Judge HASTINGS. In advance of the Borders trial.

The VICE CHAIRMAN [continuing]. Considering the importance of this issue and that Mr. Shorter did not take them and use them at trial?

Judge HASTINGS. Mr. Shorter testified—and I believe my memory is in conjunction with his. And that is that these—he saw yellow papers when I was in his office, and that they sat there, and that he had no interest in them.

Now, why he had no interest in them, Senator, I cannot tell.

The VICE CHAIRMAN. Well, my time is up, and I will pursue this with you when my next round comes, as I will pursue with you the tactical advantage that I think you would have enjoyed had Bill Borders been acquitted, and the question of your duty as a citizen, let alone a Federal judge, to see to it that this kind of critical evidence, had the prosecution had it, exculpatory as it is and not made it available, it would have been a reversible error.

Judge HASTINGS. Sure.

The VICE CHAIRMAN. Would have been.

Judge HASTINGS. I hear you, Senator.

The VICE CHAIRMAN. OK.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Judge Hastings, you mentioned this morning that you had spent somewhat of a restless night. If it's any consolation, I turned the lights off about 3:30 this morning and then was fairly restless from then until around 5:30 or 6:00 when I got up, thinking of this case.

I listened to Senator Specter's questions, and I think some of the same questions are certainly in my mind also and the minds of others. So let's go to the Hemp letters just a little bit. Bear with me if some of this is repetitious, Judge.

Judge HASTINGS. Yes, sir.

Senator LEAHY. You wrote those on the bench, or drafted them on the bench on October 5th on a yellow pad; is that correct?

Judge HASTINGS. That is correct, Senator.

Senator LEAHY. Was there a trial going on while you were writing them?

Judge HASTINGS. The trial of the *United States of America* v. *Dominic Santorelli* was in progress, sir.

Senator LEAHY. But you were able to just keep on drafting the notes and preside over the trial?

Judge HASTINGS. Senator, I do it a lot, and not only that, my staff comes in and out of the courtroom on a frequent basis, bringing me matters that require my attention to read and sign, and it is not uncustomary.

Senator LEAHY. And we're familiar with that up here on this——

Judge HASTINGS. And I meant no offense at all——

Senator LEAHY [continuing]. Bench here.

Judge HASTINGS [continuing]. When I pointed that out, and I understand that dynamic.

Senator LEAHY. But let me tell you this: But you were also able to do it in a way with virtually no cross-overs or anything. You've got sort of a final draft form, with the exception of perhaps you'd leave out the amount of money and the name and a couple——

Judge HASTINGS. Senator, could I request that I have an appropriate security official stay with me for the duration of my time in Washington, and that I call my mother, and that an appropriate security official go to my home and secure every item of paper in my house that would reflect many matters of this kind? My point being I can do no more than tell you——

Senator LEAHY. Judge, I——

Judge HASTINGS [continuing]. Wrote them perfectly, and I'm glad I did.

Senator LEAHY. Judge, I'm not disagreeing. I just want to make sure I fully understand this.

Judge HASTINGS. I understand, Senator.

Senator LEAHY. When you finished whatever break you had in court—I mean, did you just get up sort of like this, pick up everything on the bench, and leave? Or did you wait and pick up those papers at the end of the day? Or do you remember?

Judge HASTINGS. I really don't remember. If my day had ended insofar as my overall responsibilities on the bench—and I would have to go back and see if the jury had been put to bed in *Santorelli* at that time. If they had, I would have come off the bench with everything as I do very frequently. But if, in fact, I was going back to preside further in evidentiary offerings, the likelihood is strong that either could have occurred. But, Senator Leahy, as we're looking back, I really don't remember. I think at some point I put them in my desk drawer, but if you ask me to tell you the time, I couldn't tell you.

Senator LEAHY. That's the next thing. You say you put them in your desk drawer. You didn't put them in a file; you didn't put them on the desk. You put them in your desk drawer, as you recall?

Judge HASTINGS. That is correct. And if we could do the same thing——

Senator LEAHY. In your office?

Judge HASTINGS. Yes, sir. And if we could do the same thing, put a security official with me, call Betty Williams and send a security

official to my office, Senator, so help me, you will find things like this in my desk drawer.

Senator LEAHY. Well, at some point, you testified, you decided not to send these letters.

Judge HASTINGS. That is correct.

Senator LEAHY. Why didn't you just throw them away, then?

Judge HASTINGS. I keep a lot of things, and that's why I would like to produce my room. I've kept everything during these eight years. I considered it critical. If I left them there that night, I didn't take them home with me. And then under the circumstances, I don't know whether I ever looked for them until such time as I knew that this was going to be a problem, Senator.

Senator LEAHY. Well, you said the FBI came in your chambers on October 9th and took a whole lot of things out. Did they take these?

Judge HASTINGS. No, sir, they did not.

Senator LEAHY. Did they take anything else from inside your drawers?

Judge HASTINGS. The only thing that they took that was personally mine were pictures, that were not lewd pictures, they were personal pictures. And why they took them, I don't know. And I've never seen them since. Now, if it is that they did not take them, then they were taken by somebody because I don't have them any more. But that's all they took that was a personal matter of mine. They took other things pursuant to the subpoena, as I have testified.

Senator LEAHY. Well, let me make sure I fully understand that. Let's think of the top of your desk on October 9th. Did they take anything off the top of your desk?

Judge HASTINGS. I don't believe so, but they accessed my chambers behind closed doors, Senators. And I don't know what they looked at——

Senator LEAHY. Well, I mean, do you remember anything gone off the top of your desk after they'd been there?

Judge HASTINGS. No, sir. The only thing I have a memory of being missing that was personal was my pictures. But may I——

Senator LEAHY. Where were the pictures? I just want to follow it up.

Judge HASTINGS. In my drawer.

Senator LEAHY. They were in the drawer?

Judge HASTINGS. Yes, sir. But——

Senator LEAHY. The same drawer?

Judge HASTINGS. The drawer is a big desk. It's a drawer.

Senator LEAHY. But were they in the drawer where the letters to Mr. Hemphill——

Judge HASTINGS. Senator, I don't remember, I really don't. But I'm curious. Following the Senator's line, if you would permit me, the agents that went to my office I don't believe would have known what these matters were or others unless they had been directed to address that.

Senator LEAHY. I understand that. I'm just trying to follow those letters and have it clear in my own mind. You understand, coming from—I'm just a——

Judge HASTINGS. I understand, Senator Leahy.

Senator LEAHY. I'm just a small-town lawyer, and I'm trying to follow what's going on in the larger cities.

Judge HASTINGS. A fellow from Des Moines, Iowa, beat the death out of me once, a small-town lawyer, Senator.

Senator LEAHY. That happened before, too. Now, you didn't give these to Mr. Hirschhorn, these letters?

Judge HASTINGS. No, sir. But Mr. Hirschhorn was not my only attorney.

Senator LEAHY. I understand

Judge HASTINGS. Right.

Senator LEAHY. And you never showed them to Mr. Hirschhorn?

Judge HASTINGS. I did not.

Senator LEAHY. And was Mr. Hirschhorn ever aware of them?

Judge HASTINGS. Only by way of a very brief discussion, and in a memorandum to his own file, Mr. Hirschhorn reflected that it was going to be very necessary that these letters be produced.

Senator LEAHY. Did he ever ask you for them or copies of them?

Judge HASTINGS. He was assured that I would give them to him at some point in time, and we severed our relationship before I did.

Senator LEAHY. He was assured you would give them to him, but he didn't ask you?

Judge HASTINGS. Assured by me. No, sir.

Senator LEAHY. Was that just sort of volunteered, or did he ask you for them?

Judge HASTINGS. No, no. Joel is meticulous. He's a great lawyer, and he was about the business—Senator, I have talked about the attorney-client privilege, and the only thing is I'm not trying to set up any quarrel with Joel Hirschhorn. But I have—when we severed our relationship, he gave me his personal interoffice memorandum. I didn't know which Senator would ask me this. Just as I did with Senator Specter, may I please leave it for you and your perusal and any of the other committee members, or offer it as an evidentiary item? Because I've gotten to the point where I really don't understand why it's difficult to be understood. And this particular situation will reflect everything that Joel was about trying to do, and it was very carefully and meticulously undertaken.

Now, I don't want to, unless you put me in that position, to get in a war with an attorney. I don't need that. This is a great lawyer that represented me. We simply had a difference of opinion.

Senator LEAHY. Let me just follow the next step of that. I'll leave that to the chairman to decide if he wants that memorandum. But you then gave the letters to Mr. Mavrides in early 1982; is that——

Judge HASTINGS. Eventually, but you know what we are doing? We are isolating on one thing. There was so much that had to be put together, Senator Leahy.

Senator LEAHY. Please, I know, but let me follow this one item.

Judge HASTINGS. Yes.

Senator LEAHY. I think I have looked at a lot of the other ones, but I particularly want to isolate this one. And trust me to put everything in context.

Judge HASTINGS. Yes, sir.

Senator LEAHY. And I will. I still remember a few things from my days when I was a prosecutor and had to get the whole picture. He put them in his office safe. Is that a fact?

Judge HASTINGS. I asked him to put them in his office safe, and I was present when it was done, Senator.

Senator LEAHY. But then you eventually took them back out of his safe?

Judge HASTINGS. I had the hardest time. Andrew was about to be put out of the office, and I couldn't even get him to come to the office and open the safe. And, regrettably, Senator, when he did, somebody plundered his safe, and I don't think he had any money or anything like that. But these letters, when I ultimately retrieved them, when he told me that the safe was open, just oodles of stuff was scattered on the floor. Somebody had been there before me, and I make no accusation about anything, call the FBI or anything. Somebody had done that.

And excuse me, I want to make it clear. I do not think that it was the FBI.

Senator LEAHY. No, I understand. I understand what you're saying, Judge.

Judge HASTINGS. Yes, sir.

Senator LEAHY. But you went in there at night by yourself——

Judge HASTINGS. It was eerie.

Senator LEAHY. Here's this open safe, and you just went in?

Judge HASTINGS. I got what I went for, and——

Senator LEAHY. How long did it take you to find them?

Judge HASTINGS. Not very long at all, because the things were cluttered all over the floor, and I also took some other personal things of Andrew's that I don't care to discuss. They're totally unrelated to——

Senator LEAHY. And then what did you do with the letters?

Judge HASTINGS. At some point in time, I prepared them with Jeanette Montee, the lady that was working in his office. She was a secretary, and she stayed on even after their relationship was severed. She stayed on, and she prepared a receipt. And if I'm not mistaken—and I would stand corrected in the record—I believe Reid Weingarten made a personal visit to the office, and Jeanette handed them over to him.

Senator LEAHY. Last question. You did not call Mr. Borders as a witness at your trial?

Judge HASTINGS. No, I did not.

Senator LEAHY. Ever had any temptation at this one insofar as Mr. Borders is the one person who knows exactly what he did, any temptation to just go out to the phone, pick up the phone, and say, "Bill, come on in and testify"?

Judge HASTINGS. Temptation, Senator, but it's been my experience, based on all of the things ongoing, that anything can be misinterpreted. And I can assure you that I would like to have that visit, but I would like to have that visit under a different aegis other than me placing a call or visiting with him because I would not want that to be misinterpreted.

I told you earlier that Mark McDonald, one of the lawyers that represented me, says that he had a visit with Bill Borders and that Bill Borders refused to discuss the matter with him.

Senator LEAHY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Judge, what is the term of the president of the National Bar Association? Is it a year? Two years? How long does it last?

Judge HASTINGS. It's a year term and the president-elect begins some of the functions, as is the case in some organizations, to orient him- or herself.

Senator DURENBERGER. And the one-year term goes from what month to what month?

Judge HASTINGS. They're in session now, and I believe they will elect a president. And so it will be July to July. They will elect a president-elect, and the present president-elect comes in at this time.

Senator DURENBERGER. And is it accurate that Bill Borders served as president from July 1980 to July 1981?

Judge HASTINGS. I was corrected by Mr. Baron, and I believe that that's the time period. I was mistaken when I testified the first day here regarding his exact time period, and Mr. Baron corrected me. Yes, sir, Senator, I think that's the time period.

Senator DURENBERGER. I'm raising it only in part because you're expressing difficulty in being understood here, and I want to take it another step farther.

At the time that you made the statement about Borders' official relationship with the National Bar Association, my notes reflect that you did make it very clear to this committee that Borders was there—that is, at your swearing-in—only as president of the National Bar Association. And you made a point of that to this committee, and you followed it up by indicating that Andrew Mavrides was there and Hemphill Pride, "at that time he was my best friend," was here.

This morning, I asked you about Bill Borders, your friend, and you corrected me. Perhaps now you can correct whatever impression we may have of the nature of your relationship with Bill Borders during this period of time.

Judge HASTINGS. And right at that particular point in time, may I please, Senator Durenberger, ask either the clerk or the chairperson or House managers or my lawyer whether or not the program for my investiture is in evidence? I simply don't remember, Senator. If I had it, then I could show you the capacity that Bill Borders came there. But, Senator Durenberger, I want to share with you what happened.

Senator DURENBERGER. I don't have a lot of time.

Judge HASTINGS. No, sir, you——

Senator DURENBERGER. So maybe you could just respond to the question about the nature of your relationship with Borders.

Judge HASTINGS. I certainly can. On that particular day, on that particular day at the hotel where many members of the National Bar Association came, and the Florida chapter of the National Bar Association was meeting in conjunction with my investiture, Bill Borders took me apart in a speech because both of my law clerks were Jewish, and that I had not hired any African-American law clerks. I mean, he lit into me.

Senator DURENBERGER. What has that got——

Judge HASTINGS. What I'm telling you is that under those circumstances he was there as a representative of the National Bar

Association, but he was my friend at that time and he was my friend until such time as these ongoing matters ensued, Senator. So I'm not denying that.

Senator DURENBERGER. Thank you.

Now, let's take until such time as these ongoing matters ensued, and give that definition. Give it a date, if you can, to the best of your recollection. The point at which the nature of your personal relationship with Bill Borders changed.

Judge HASTINGS. October 9th, 1981, at whatever time he was arrested and I was advised about the allegations. But, more specifically, as the next four or five days unfolded and I learned more and more about what the allegations were, then I would say our relationship changed drastically.

Senator DURENBERGER. But before that time, my impression is he may have fallen in the category, same category as Hemphill Pride, "At that time he was my best friend."

Judge HASTINGS. No. No, no, no.

Senator DURENBERGER. Up until October 9th.

Judge HASTINGS. No, no, not——

Senator DURENBERGER. "One of my best friends."

Judge HASTINGS. Before October 9th?

Senator DURENBERGER. Yes, before October 9th.

Judge HASTINGS. One of my good friends, but not even close to being called one of my best friends, Senator.

Senator DURENBERGER. But a good friend in the sense that you spent an awful lot of time together.

Judge HASTINGS. Yes, but not isolated in the sense that only with him, there are others as well with whom I have spent time that I call good friends.

Senator DURENBERGER. Right.

Judge HASTINGS. But, Senator, Hemphill was my best friend. My next best friend at that time was Jesse McCrary. My next best friend was Bill Larkins, and beyond that I don't have a lot of people that I call my best friends, but I sure have a lot of friends.

Senator DURENBERGER. Now, the nature of the friendship between you and Bill Borders would have been of the nature that you would share with him from time to time personal concerns that you might have, either personal to you or concern that you might have for him?

Judge HASTINGS. I think that anything that we talked about could be put in that category, but I don't recall having any, say, health difficulties or monetary difficulties or tax problems or anything along those lines. The most personal friend we would have talked about would have been our respective mothers and their welfare and our concern for them from time to time. Bill Borders and I didn't even talk about women the way men talk about women sometimes. [Laughter.]

Senator DURENBERGER. I believe you have testified that you never discussed the *Romano* case with him. With this friend, did you discuss any of your cases with him?

Judge HASTINGS. Did I discuss any of my cases?

Senator DURENBERGER. Right.

Judge HASTINGS. If I did, it would have been generic, because I am not in the habit of discussing with anyone the specifics of sub-

stantive matters ongoing. Here again, to dispel that particular notion, I know I did not with Bill Borders, but very occasionally with attorneys and other judges and lay people who may know you're involved in a case, they will ask you questions about it and sometimes you answer.

Senator DURENBERGER. Thank you. Somewhere there is evidence that somebody at least thinks that Bill Borders never missed a great prize fight, and if that were to be accepted as true, it would be hard for the people here to believe that, with the proximity of your relationship to Borders, the time you spent with him in Washington, DC the previous week, that he would never have mentioned to you that he was going to be at the Leonard-Hearns fight.

Judge HASTINGS. My reaction?

Senator DURENBERGER. Yes.

Judge HASTINGS. He didn't mention it to me, and I didn't learn until we were at the proceedings before the judicial inquiry that this was a particular habit of his. And when I say that, I think during the trial Reid Weingarten might have asked questions regarding same. I knew of no propensity of his to visit big fights. The only one I ever attended was the return of Ali and Frazier, and that was in New York City, at Madison Square Garden, and I was there and I socialized with a number of members from the National Bar Association through O.T. Wells, and Bill Borders to my knowledge, at least, was not in that sphere of people at that time.

Senator DURENBERGER. Thank you. I've looked at the transcript to see if I could find out any detail, either on your direct or cross-examination, about the point in time, on October 9, 1981, that your relationship with Bill Borders changed. As I understand it, it happened out near an elevator at the L'Enfant Plaza.

Judge HASTINGS. That would have been the beginning.

Senator DURENBERGER. For some strange reason, there is very little evidence here, either on direct or cross-examination, as to the nature of the conversation that took place between you and Hemphill Pride, and I wondered if you wouldn't take whatever time is appropriate right now and, with that great memory of yours, detail for us exactly what Hemphill Pride said to you on that occasion.

Judge HASTINGS. Senator, I wouldn't run the risk of saying it's exactly what he said, but I've gone over and over a lot of times. The first thing was the phone call, and he said to me, "Blood, come to my room, there's an emergency." I went in that direction, after the things that I've testified about that I did. Once I arrived to his side of the L'Enfant Plaza, when I got off of the elevator, there was a divan or loveseat sort of thing right over to the left, and he kind of drew me to the side and informed me, he says, "John Shorter has called me, and Bill Borders has been arrested. He advised me Bill Borders has been arrested and it has something to do with bribery in your courtroom." I remember the words "courtroom," because I look back at it, I just thought that that was particularly strange language, but that's what he said.

He said, "And an agent, Special Agent Murphy wants to talk to you as a witness." And then he said that, "We have decided that you should get Ken Mundy to go with you to talk with the FBI." And I told him, "I didn't know Ken Mundy. Who is Ken Mundy and what do I need him?" Then he said, to me that he really

didn't know what Bill Borders had done or if he had done anything and he didn't know what I had done or if I had done anything, but in his opinion, if there was some trouble, that I would be better off on my own turf.

We went through the same thing again. I was literally taken aback and I asked him, "What did John Shorter say to you." Now, I've heard different versions of Hemphill saying that he had two telephone numbers—a telephone of two agents. I do have a distinct remembrance of Murphy being told to me as one of the agents. I do not have any memory, and I do not believe, that he gave me any telephone numbers, and that's the sum and substance of the conversation at that particular point in time. I don't have a memory of very much else, other than his going back to his room and me going to mine.

Senator DURENBERGER. Thank you for your response. My time is up.

Judge HASTINGS. Thank you, Senator.

The CHAIRMAN. Senator Pryor?

Senator PRYOR. Mr. Chairman, I have no questions of Judge Hastings, but I would like to clarify one point.

This morning, when I attempted to sort of describe the composite picture and makeup of this panel, I referred with respect to my good friend from Montana, Senator Burns, as a Montana auctioneer, and I only did that to emphasize that sometimes in certain environment, in an environment such as this, that a non-lawyer is a very, very valuable commodity, and I wanted to apologize to my friend from Montana if I owe him any apology, and I hope he did not take it—

Senator BURNS. You don't need to apologize, because I think Senator Rudman footnoted that very well.

Senator PRYOR. Thank you.

Senator BRYAN. At least he didn't call you a lawyer. [Laughter.]

Senator PRYOR. Mr. Chairman, I have no questions of Judge Hastings.

The CHAIRMAN. Thank you, Senator Pryor.

Senator Rudman?

Senator RUDMAN. Thank you, Mr. Chairman. I believe this will be my last round and I don't believe I will use the full 10 minutes.

I wanted to say to you, Judge Hastings, that the way this procedure is going to work, from my prior experience, having served on the Claiborne panel, is that this panel, when the Senate goes in closed session this fall, after you and your counsel and the House have an opportunity to argue this, the Senate will be closed. The deliberations will take place for hours and then the Senate will be opened and there will be a vote on each one of the counts. And the members of the Senate will be looking to this panel during those deliberations to explain beyond what the record indicates as to the testimony, and so my questions are directed towards that purpose, so that we will have that record of your responses rather specifically to the questions I know, from my prior experience, are going to be asked about this record. That was the purpose of my questions this morning.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. I have two questions: First, the September 16th dinner that you had at the Fontainebleau, you testified that you were there with the young lady who testified here——

Judge HASTINGS. Yes, sir.

Senator RUDMAN [continuing]. For dinner, and that you went to the Fontainebleau because at some prior time when you were in Washington, I believe with Jesse McCrary at the same time, Mr. Borders had said, "Alcee, I'm going to be in Miami at the Fontainebleau on the 16th of September." Is that accurate?

Judge HASTINGS. Wednesday.

Senator RUDMAN. Wednesday, the 16th of September.

Judge HASTINGS. I don't recall that he said the 16th, but he said Wednesday, and he said the main dining room and he said at 8:00 o'clock.

Senator RUDMAN. And that was not many days before that Wednesday.

Judge HASTINGS. That was not many days before at all.

Senator RUDMAN. Now, in order to judge whether or not there is credibility to your answers, people are going to look at the sum of human experience, not as you would as a judge, not as each of us might do, but how generally people might function under certain circumstances.

I have this question: It seems strange to me that if a friend said he was going to be at a particular hotel at a particular time and he was from out of town and I was from that city, that either (a) I would try to get a more accurate time as to when he was going to arrive there, and if he was staying there, or at least be when I got there, check at the hotel desk and just see if he was registered there. Obviously, you had an interest in seeing him, because you went to the trouble of inviting a young lady to dinner and went to the Fontainebleau Hotel solely for the reason that you thought that Bill Borders was going to be there.

My question is why didn't you do the things that I think would normally be expected, if you were meeting someone flying in from out of town, coming to a particular location?

Judge HASTINGS. Well, I'm going to follow the Senator's representation first about going to check to see if he was registered at the hotel. He didn't tell me that he was going to stay at the hotel and I had no reason to believe that that was the case. The Fontainebleau main dining galleries is just a popular place where people go to eat, as are other popular places.

I did tell the maitre d', Senator, and I went back to try to talk to the maitre d' and they had no memory of my having said anything about expecting someone, and I did go into the Poodle Lounge and did try to find the same person and I couldn't find the same person I didn't believe I had spoken to in that lounge, which was adjacent to that room. Those are the things that I did and I did not page him. I really thought that if he was coming there, as I suspected that he was, that he would find me.

Senator RUDMAN. Well, I think that the testimony will show whatever it shows. I believe you testified—and I will check it myself, and my recollection may be imperfect—but I believe that you testified that he told you he was going to be at the Fontainebleau on that Wednesday——

Judge HASTINGS. Yes, sir, but——

Senator RUDMAN [continuing]. And I cannot say how you might respond to that. I would respond to that from an out-of-town friend saying he was going to be at the Fontainebleau, if I lived in Miami, that he was going to stay there, not just have dinner there, I would think, but you were telling me you didn't take it that way. You just took it that he would be at the Fontainebleau and that he was going to be in Miami generally, and you had no interest in asking him where he was going to stay?

Judge HASTINGS. No, sir, and——

Senator RUDMAN. OK.

Judge HASTINGS [continuing]. Senator, all I can tell you is that Bill's comings and going, if we had a full panoply of Bill Borders in here, would present an unusual picture.

Senator RUDMAN. Judge, your answers are on the record, your testimony is on the record, that question will be asked, you have answered it, and I have given you the opportunity to answer it.

Judge HASTINGS. Thank you, Senator.

Senator RUDMAN. The second question is more serious, and it has to do with Hemphill Pride. I think we can stipulate, up until this event, he was your best friend.

Judge HASTINGS. Yes, sir.

Senator RUDMAN. He got himself involved in this in a very unusual way and you are obviously very bitter at Hemphill Pride, that comes through. Betrayal by those closest to us always hurts the most, and I understand that, if that is what you feel.

But I don't understand something, Judge Hastings, and I want you to explain it to me. Hemphill Pride testified here, and there were two parts of his testimony that were very interesting. One part of his testimony buttressed your position. In fact, you have different recollections, but Pride testified that he told you that you should go back to your own turf, that he told you you shouldn't use the lawyer who was suggested to you by Mr. Shorter, and that he told you that you ought to be protecting yourself and get home. You heard him testify to that.

Judge HASTINGS. Yes, sir, here and elsewhere.

Senator RUDMAN. So, on that side of it, he was obviously being a friend.

Judge HASTINGS. Yes.

Senator RUDMAN. Now, as I understand what you are claiming is that on the key testimony, which is very important, as you recognize, of the letters, that his statement to this committee and on prior occasions that he did not request letters and that he absolutely refuses to back up that part of your story, is false. That's what you are saying?

Judge HASTINGS. No, no, no. He did not request the letters, and if you read the letters, you will see that I am sending it to him, if I were to send it, to ask what he thinks with reference to—no, Senator, what he testified there is true and, Senator, the one thing that causes me to not wish to have a friendship with him——

Senator RUDMAN. Is his wiring of your conversation.

Judge HASTINGS. That's all.

Senator RUDMAN. I understand that.

Judge HASTINGS. That's all.

Senator RUDMAN. I understand that.

Judge HASTINGS. I've tried to be magnanimous about a lot of things with a lot of people, but that just hurt, and that's all I can tell you about it, and I will overcome that eventually with Hemphill.

Senator RUDMAN. That evidently hurt you more than the fact that Bill Borders, according to your theory, set you up, destroyed your life and may cost you your judgeship?

Judge HASTINGS. No, sir, that does not hurt me more. Bill Borders stole my name, and I have repeated that over and over again, and he too falls in that category of former friend. There is no question about it, and I don't think that any of my magnanimous attitude is going to be able to change that.

Senator RUDMAN. Did your relationship with Pride over the years indicate to you that he was generally a man of integrity and a man who told the truth?

Judge HASTINGS. No, Senator.

Senator RUDMAN. It was not?

Judge HASTINGS. No, sir.

Senator RUDMAN. You had reason to doubt his word on other occasions?

Judge HASTINGS. Yes, sir.

Senator RUDMAN. And you do not believe that his testimony before this committee was truthful?

Judge HASTINGS. I believe that a large part of his testimony was truthful. There were certain areas that I don't believe that he had as good a memory as I would have hoped he would have, and Senator, I could bring in a lot of people to talk about his memory. He just did not deal with minutia and he wasn't good at remembering a lot of things, and that was from when we were together in school, and I'm not talking about studies, I'm just talking about general things.

Senator RUDMAN. But on the key question of the letters, he did not request them.

Judge HASTINGS. That's correct.

Senator RUDMAN. In fact, it was clear to you that he was very concerned about what you might do with some of the officialdom in South Carolina, for the reasons that he explained——

Judge HASTINGS. That's right.

Senator RUDMAN [continuing]. Which was racial in nature, as I understood his testimony, sad to say, but that is what his testimony was, and it well may be accurate at that time. But the fact is that Mr. Pride really found himself in the middle of this because of that telephone call which is in dispute.

Judge HASTINGS. Yes, sir, October 5th.

Senator RUDMAN. That is where he is in the middle of this, and he testifies only that he told you in the car on the way to Columbia that he was not going to remember any letters——

Judge HASTINGS. Right.

Senator RUDMAN [continuing]. And you say that's false.

Judge HASTINGS. Yes, sir, that's false.

Senator RUDMAN. I mean that's a lie is what you're saying.

Judge HASTINGS. I would raise it to that level, yes, sir.

Senator RUDMAN. My question then is, in this whole relationship, why would Hemphill Pride lie? And if your answer is that it was going to curry favor with the FBI, I don't think that's an acceptable answer. That may be your answer, but why would he lie about his friend? You did nothing to Hemphill Pride. By everyone's agreement, you tried to help him.

Judge HASTINGS. Sure.

Senator RUDMAN. Why would he lie about that key point—and that's a key point——

Judge HASTINGS. Yes. First, I don't——

Senator RUDMAN [continuing]. Because that shows you are attempting a cover-up, that's obviously what's going on. Why?

Judge HASTINGS. First, I don't think he has a distinct memory of the events and, second, I think that when he did say something about this particular matter he was locked into it and, third and perhaps most important, I think that his desire to have his licenses restored would cause him, once having said something that he did not remember well, to continue to say that, sir.

Senator RUDMAN. In other words, you're saying that the statement that we all keyed on, which came from the judicial proceeding in 1985, in which he originally recollected and stated that—and I examined him about it here that day——

Judge HASTINGS. Exactly.

Senator RUDMAN [continuing]. That that statement was not a statement of his own recollection, that was a statement that in your view was planted in his mind by the prosecutors?

Judge HASTINGS. At some point in time during the overall grilling that he went through, and that's why I respectfully asked for matching his statements up all the way through, the same as I do with Dredge. They got better and better and better in terms of their memory, but worse and worse in terms of what they said about me.

Senator RUDMAN. Judge Hastings, thank you. My time is up.

Judge HASTINGS. Thank you, Senator.

Senator RUDMAN. I would just say, in concluding, to you, Judge Hastings, for your information, it is my view that the members of this panel, and I think the members of the Senate who remain relatively ignorant about these affairs until we open this, would far rather find reason to acquit you than convict you.

Judge HASTINGS. I understand, Senator.

Senator RUDMAN. But there is some very tough evidence here that in my view still has not been to my satisfaction fully explained.

Judge HASTINGS. Senator, can I ask you something?

Senator RUDMAN. You can ask me anything you would like, Judge Hastings.

Judge HASTINGS. Does anybody else have a responsibility to bring to you better explanations, and do you recognize some failings on the responsibility of those that prosecuted me in that regard?

Senator RUDMAN. Judge Hastings, I find a great deal wrong with the work of the FBI, particularly in the wiretap count. I find other things I don't particularly like about the rest of the counts, but those are irrespective of four or five major contradictions in this record which I still have to resolve in my own mind.

Judge HASTINGS. Thank you, Senator.

The CHAIRMAN. Senator Bryan?

Senator BRYAN. Judge, I would like to revisit the first part of Senator Rudman's question, and that is the night of the 16th in Miami at the Fontainebleau, which is a critical date.

Now, I believe you testified previously that some years before, maybe when you were in law school, that you had had occasion to be at the Fontainebleau, and I don't know whether to have dinner there but at least to have been there for some social purpose, am I correct?

Judge HASTINGS. That is correct. I was a member of the moot court team at Florida A&M, and the meeting of the moot court competition was in Miami Beach.

Senator BRYAN. Other than that prior event, had you been to the Fontainebleau, except for that event, until the night of the 16th of September?

Judge HASTINGS. I had eaten at the dining galleries before, I've eaten at at least the restaurant for breakfast before. I had never been in the Poodle Lounge at any time. I had stayed at the Fontainebleau maybe a couple of times before it became the Fontainebleau Hilton, and on Labor Day after it became the Fontainebleau Hilton, and one of the best times I ever had in my life was watching Aretha Franklin at the Fontainebleau.

Senator BRYAN. You were expecting Mr. Borders to join you for dinner?

Judge HASTINGS. I was expecting him to come to the Fontainebleau. I didn't know whether he was going to eat, and the reason I can say that is I have been in other settings where he has showed up and didn't eat and I've been in other settings where he ate and I did not.

Senator BRYAN. But the arrangements, as I understand your testimony, is that you were to meet in the main dining room.

Judge HASTINGS. Yes, it is called the dining galleries.

Senator BRYAN. The dining gallery. Was that terminology used in your discussion with Mr. Borders?

Judge HASTINGS. I don't think so. I think he said main dining room.

Senator BRYAN. And you were there for a period of time with your companion that evening and——

Judge HASTINGS. Maybe two hours.

Senator BRYAN [continuing]. And then you had gone up to the maitre d' or someone else to inquire as to—at least that is what you have testified——

Judge HASTINGS. Coming in.

Senator BRYAN [continuing]. To see if indeed friends from Washington, DC or friends from the District of Columbia had arrived, and that reference, as we are to understand it, was to Mr. Borders, am I correct?

Judge HASTINGS. I announced to either the maitre d' or the hostess that I was expecting a Bill Borders when I went in.

Senator BRYAN. To join you in the restaurant?

Judge HASTINGS. Yes. Then, after a period of time, he was not there, I went into the Poodle Lounge, which was adjacent, that I had seen, thinking that maybe I would see him there, and he was

not. I spoke to one, there were two bartenders and I spoke to one of them and informed him that I was expecting a Mr. Borders. I came outside the other side, through the foyer of the hotel, and went back in through the main entrance, I believe that I had gone in, sat down and finished my meal, and then leaving, said to either the hostess or the maitre d' that if he came, to inform him that I had been there.

Senator BRYAN. How many restaurants, to the best of your ability, were at the Fontainebleau?

Judge HASTINGS. Four.

Senator BRYAN. Four.

Judge HASTINGS. Four others, and I'm the one that went and found out where they all were and brought that to the attention of Reid Weingarten and the FBI.

Senator BRYAN. Did you, on the night of the 16th, when Mr. Borders did not appear and you went on initially to look into the Poodle bar, did you go to each of the other restaurants thinking that perhaps there may have been some failure in communication?

Judge HASTINGS. No, Senator, I did not. He said he was going to come there, and it's not all that difficult to find someone, and on that particular evening I don't think 20 people dined in the dining galleries. It was very easy to see someone in there.

Senator BRYAN. Well, I have much I think the same concern that has been voiced by Senator Rudman. We all have experience in terms of social-business arrangement, where we agree to meet people for whatever reason, at restaurants, at coffee shops at hotels, all of us on the panel have had that experience, and I dare say, speaking just for this member, but I think many of us have had experience where the arrangement was to meet at a particular restaurant, but there is some confusion either in the communication as delivered or as received, and I know that myself on a number of occasions have expected somebody to meet me at a main restaurant as opposed to the coffee shop or some specialty restaurant, when the individual that I am expecting to meet there is not there.

It seems to me the common experience in life is for the party who is expecting the person to get up and to take a look and to go into each of the other restaurants and say to the maitre d', the captain, the hostess or whoever it is, "Hi, I'm Judge Hastings, I'm expecting Bill Borders," to describe him and say, "Look, has such a gentleman been into this restaurant in this evening, if you see such an individual, would you tell him that I'm going to be over here at the main"—there may be some confusion. I don't gather from your testimony—and I want to be very fair before being harsh in this judgment—I don't see that kind of action on your part.

Judge HASTINGS. Well——

Senator BRYAN. You didn't page him, you didn't make any inquiry, that frankly gives me a little trouble.

Judge HASTINGS. But I did talk with either the hostess or the maitre d' going in and out, I did talk——

Senator BRYAN. At the main restaurant?

Judge HASTINGS. Yes, sir, and I did talk to the gentleman in the Poodle Lounge. Senator, the Fontainebleau is a very, very big place, and where those restaurants are are downstairs, outside, and

elsewhere, and if I had gone to all of them, it would have taken a considerable period of time. It never entered my mind. But most importantly, Senator Bryan, this was not the most important dinner in the world at that time. It has since become a very important matter, and I understand that.

Senator BRYAN. I understand that, and I don't mean to elevate it to the most important dinner of your evening from your perspective at that time, considering your testimony and the position that you would want this panel to take, but nevertheless you are a good friend, you look forward to seeing him, let's attach no great significance other than the fact that you're friends and there's a chance to visit who has been a friend for many years. I have difficulty that there wouldn't be at least an attempt to page——

Judge HASTINGS. Senator, I had just seen him not too long before that but, more important, right here at the Lion D'Or, he said that he was going to have dinner with me. Now, that's an isolated situation, because that's a single facility in terms of—but I didn't look for him and I didn't go outside or anything. He just didn't show up.

Senator BRYAN. Thank you very much. Thank you, Judge.

I yield my time back, Mr. Chairman.

The Chairman. Senator Bond?

Senator BOND. Thank you, Mr. Chairman.

Judge Hastings, let me just say that, although there has been questioning here about your ability to write letters or drafts without any strikeovers on the bench, I believe I can say from firsthand knowledge that I know many judges who can and do that. I have seen it in operation and I, for one, would be completely willing to accept your representation that you can do that.

I am troubled by the letters, the circumstances around them, and I think that's something that the full Senate is going to have to decide, it's going to be one of the tough judgments we have to make, but the fact that you wrote them without any strikeovers is to me not at all exceptional.

I have just a couple of questions that I wanted to finish up with, and thank you for your patience with us. When we hear colorful language, it tends to stick in our mind. Senator Burns made a statement about having a good memory, but it was short, and that's probably something that will stick for a while.

When Mr. Pride was here before us, he spoke about a number of things that he says that he stated to you, such as "I'm driving this bus," that would be the kinds of things that would stick in a person's memory if they had been said to him. It is your testimony that he never said any such statement like that when you were with him in that last meeting or in the meetings where you were asking or he was asking about the letters?

Judge HASTINGS. Unequivocally, Senator, that's my statement.

Senator BOND. Mr. Pride also testified, and Senator Rudman referred to the fact, that he was concerned about racial prejudice still existing in South Carolina in the judicial system, the Grievance Committee, the top echelons of the judiciary. Did he ever discuss with you or mention to you his concern that direct assistance by you or other members of the National Bar Association might be counterproductive?

Judge HASTINGS. No, he did not, Senator. His actions and his deeds belie that kind of consideration, because even though only local people appeared when he ultimately was before the committee that eventually restored his privileges, Hemphill reached out and we reached back in an effort to assist him, and he never expressed to me that it would be inappropriate to help him. He never expressed that, Senator.

Senator BOND. Did he ever express any reluctance about your or other of your colleagues of the National Bar Association communicating directly with the judicial officials who would reinstate him?

Judge HASTINGS. No, sir. Just to refer to the letters for a moment, among my concerns was to learn that, Senator, because, among other things, he certainly had not said it to me, so in that sense all I can tell you is he never said that.

Hemphill wanted help from all sources, and as I speak I am sure there are people who could come forward that would say that, Senator. We can't be here forever, but I could get people that could say that, and I mean not because I want them to, I could name them now, and you could go and ask them without me having said anything to them.

Senator BOND. Judge, following up on your statement that we may not be here forever, I know that my colleagues on this panel would commend you for your self-discipline, your eloquence and your unfailing cordiality.

Judge HASTINGS. Thank you, Senator.

Senator BOND. You have been through a very lengthy ordeal. We are nearing the end of the third day, and while there may be other areas we would explore, I will turn my time back and thank you for your courtesy and your answers.

Judge HASTINGS. I thank you and all the Senators, Senator Bond.

The CHAIRMAN. Senator Kerrey.

Senator KERREY. Judge Hastings, I just want to get back again to the line of questioning that we had before——

The CHAIRMAN. Excuse me just a moment. Judge, you had some documents that you had suggested Senator Specter might review. Is it——

Judge HASTINGS. I think the Senator got that.

The VICE CHAIRMAN. I got that and there is a memorandum from your lawyer which——

Judge HASTINGS. Well, I thought Senator Leahy at that point in time—can I talk with Terry a minute, Mr. Chairman?

The CHAIRMAN. Certainly, you may. Why don't you do that, and then we will be right back to more questions.

The VICE CHAIRMAN. Mr. Chairman, if the Judge is going to give me that, I would be happy. I don't want the original of whatever he has got, but I would be perfectly satisfied with a xerox copy of it.

The CHAIRMAN. Is it acceptable to you, Judge, and to your attorney for Senator Leahy to review that?

Judge HASTINGS. Indeed.

The VICE CHAIRMAN. And others?

Judge HASTINGS. Everybody. I only have one other copy, Senator.

The CHAIRMAN. We will have the clerk make a copy of that.

Mr. BARON. Mr. Chairman, could the House see the document that is being offered?

The VICE CHAIRMAN. We can give a copy to the House.

The CHAIRMAN. Yes. It is not being offered into evidence.

Mr. BARON. What is being done to it?

The CHAIRMAN. It is being handed up to Senator Leahy and Senator Specter so that they can look at it and see if they wish to ask any questions about it.

Senator Kerrey, why don't you go ahead and——

Senator LEAHY. I think I might say, Mr. Chairman, as I know the House is somewhat concerned, we are operating on this 10-minute rule and I would like to see it to know if I am going to ask further questions on it, based on my next round.

The CHAIRMAN. Senator Kerrey, excuse me for the interruption—just a minute, the House managers have——

Mr. BARON. Mr. Chairman, this document is labeled "attorney's work product." I recognize it as a document which, when it was offered at Judge Hastings' trial, the judge ruled that if it came in, all of it would have to come in and that it would constitute a waiver of the attorney-client privilege between Judge Hastings and his attorney, Mr. Hirschhorn. I just think you ought to be aware of that before anything is done with this document, because we are starting to get into a rather difficult area. Indeed, at that point, Judge Hastings withdrew the document and it was not offered. I think that's accurate.

Mr. Anderson, is that correct?

Mr. ANDERSON. Let me just supplement it slightly. It was retained by the court, or at least a copy thereof, and sealed. The Investigating Committee ultimately withdrew its motion to unseal it and the five judges simply themselves opened the envelope. I think we are glorifying form over substance here. That document has been a part of the Investigating Committee record, it has been an Investigating Committee exhibit, it was marked and it is floating around somewhere in the records and, I am sure, has been made available to the Senators. At this stage of the game, it does seem late in the day to—it simply was unsealed by the judges and it has been everywhere since, so at this state in the day it just seems——

The CHAIRMAN. Well, do I take it, from the House counsel's statement, that you are objecting to the document being reviewed by the committee?

Mr. BARON. Well, I'm not sure what's being done with it. If it is being offered in evidence or if it is being reviewed and treated as if it were evidence but it is not being called evidence; that is a triumph of form over substance. Judge Gignoux——

The VICE CHAIRMAN. Concluding that it's evidence, do you object to his waiving his attorney-client privilege?

Mr. BARON. If he's willing to permit us to call Hirschhorn, fine, it's up to the judge. But Judge Gignoux, one of the reasons Judge Gignoux would not let it in, as he said, this is not a self-explanatory document, the only way it comes in is through Hirschhorn and Hirschhorn will be subject to questioning.

Mr. ANDERSON. Mr. Chairman, may I respond again, just briefly? I think earlier on I raised the question and, again, I think the issue has been resolved against me. There are a lot of documents that have been made available to the Senators to examine. Frankly, I think that's probably one of them, if anyone—I don't know what

all came over, but I was told the Investigating Committee record was there. I have seen members refer to it and cross-examining from it. That document was part of that record, so really what I think Judge Hastings has just done is reached in an envelope that you have all had available to you in one form or another and said, well, here's one you might want to pull up and look at, if you want.

Now, I would have been much more comfortable if we had had a trial here where it was only such evidence as each party determined to bring forward and there was no—Judge Hastings, I think you have all said, has proceeded in good faith, but there have been a lot of things that ain't in evidence that have been referred to here, and here is one of them that was available to you and the Judge is now making it conveniently available to anyone who's interested.

The CHAIRMAN. Let me ask the counsel for the House, do you disagree with that statement that this is part of the Investigating Committee's report that has already been made available to us?

Mr. BARON. It was an exhibit in the Investigating Committee proceedings.

The CHAIRMAN. On that basis, I can't see any great harm in allowing one of the Senators to review it, that entire——

Mr. BARON. The question I'm asking is, if that happens, is Judge Hastings waiving his attorney-client privilege with regard to the document with regard to Mr. Hirschhorn?

The CHAIRMAN. I don't know that it is reasonable for us to ask him to waive any privilege by virtue of a Senator reviewing a document which is in the record of the Investigating Committee which came up here.

Senator RUDMAN. Mr. Chairman?

The CHAIRMAN. Senator Rudman.

Senator RUDMAN. Mr. Chairman, just to clear this up, we've all seen this document who want to look at it. I read the document 3 days ago. The key is whether or not this document is going to be included in evidence in our transcript as part of the record. Clearly, the House would be right if that was going to be done. That is not going to be done. This is not going to be included in the official record since it is not a marked exhibit of evidence, so I don't see what harm it is for Senator Leahy to review something that, frankly, all of us have had the opportunity to review for the past 2 weeks.

Senator LEAHY. Senator Chairman, if it solves——

The CHAIRMAN. Senator Leahy.

Senator LEAHY. If it makes things easier, I have reviewed it. I asked to review it only to determine if I was going to ask another question based on it. I'm not going to ask another question based on it. [Laughter.]

I think it's a moot point and we ought to just get on with the thing.

The CHAIRMAN. All right, but we will——

Mr. BARON. I withdraw my objection.

The CHAIRMAN. If any Senators wish to review it, they can do so, and the clerk can make a copy of it. Senator Specter would like to see a copy of it. It is part of the record from the Investigating Committee.

Senator Kerrey, we apologize for the interruption. Please go forward with your questions. We will start your 10 minutes now.

Senator KERREY. Judge, I'm just trying to get back to the October 9th event and your attitude at that time.

Judge HASTINGS. Yes, sir.

Senator KERREY. The last time I asked a question, I sensed I got a little more confrontational than I was really desiring.

Judge HASTINGS. I did, too, and I apologize to you, Senator.

Senator KERREY. I'm just trying to discover why the immediate response wasn't "This is outrageous, what's Borders doing to me," number one, which leads me to the second one, which is, you know, "The only thing Borders and I have been talking about the last 6 months or so has been Hemphill Pride, and what the heck is going on here."

Judge HASTINGS. Yes, sir.

Senator KERREY. That's the piece that I don't understand.

Judge HASTINGS. Senator, if you would let me answer that question, and may I please ask of you to stick a mental tack in the question that I got off the track with you about on the letters, in case you don't ask me about it, so that I can clarify that to you—and I apologize for my confrontational attitude that may have been expressed. I meant no disrespect to the Senator.

In that particular setting, Senator, on October 9th, the magic words were said, "FBI," and when those magic words occur, I would think that ordinarily, and maybe even customarily, it would be expected that a Federal judge would run over to the Attorney General or the FBI Office. I did not and, looking in retrospect, I'm positive that that was a mistake on my behalf.

But my experiences have been different than have a lot of people, and my experiences with the FBI pre—the period that I have became any kind of judge, was not the same kind of experience that most people have, and I don't have the same belief that they were going to be my protectors, and I wish that I had or could have had that.

The basis for that statement emanates from an experience that I had as a lawyer where a person was killed in Boca Raton, Florida, in the police station. I was the lawyer, and I took that matter to the FBI, and before it was over that family and myself felt set upon by the FBI.

In fairness to the particular investigators during that period of time, a person that I have the most immense respect for in terms of his abilities as a lawyer and as an investigator, is a former FBI agent named Roger Colton, who was in the Fort Lauderdale Office at some point during that time. I mention that only to show that, as difficult as it might appear to the Senator, with me having that kind of base attitude, I took an oath to uphold the law and I believe in every instance that I have managed to do that. I didn't take an oath to like the FBI, and I don't like all of them, and I probably have greater reasons now, but that's not the point.

On October 9th, my experiences with the FBI were totally different than, I believe, a lot of other judges. And I believe there may be a few other judges that fall in the same category as myself. Now, I am trying to be as delicate as I can, not to inject into these proceedings something that I don't think should be here.

Senator KERREY. As a matter of fact, I think you could sense in Senator Rudman's response, and I would share that, some considerable amount of misgivings in the way the FBI approached this particular case.

Judge HASTINGS. Yes, I understood Senator Rudman.

Senator KERREY. Let me just set sort of an abstract out here. What would your attitude be towards someone who you were told attempted to bribe a judge?

Judge HASTINGS. What would my attitude be?

Senator KERREY. Yes, just someone who was not trying to bribe you, but trying to bribe someone else.

Judge HASTINGS. I would think it despicable. And if you ask me in my capacity as a judge, if they were convicted before me, and I did have it to happen, since this event, Judge Eugene Spellman's name has been abused, as have other judges in the Southern District of Florida, and ironically the case fell before me. The matter was a plea of convenience to the prosecution and the Government, and I abided their concerns and sentenced accordingly. Left to my own devices, I believe my attitude would be tempered on the harsh side, as opposed to the lenient side in that kind of situation.

Senator KERREY. I have no other questions.

Judge HASTINGS. Senator may I please clarify for you, though, where I was asked——

Senator KERREY. Back on the——

Judge HASTINGS. May I, Mr. Chairman?

The CHAIRMAN. Yes, you may.

Judge HASTINGS. You had asked me about the letters, and I hit a mush spot in my mind. I've been here 3 days and I want to go back to it, with the Senator's permission——

Senator KERREY. Sure.

Judge HASTINGS [continuing]. And that is to assure you that somehow I still hear that some people think that the letters were sent. They were being prepared and Hemphill was the person that I was going to send them to in Columbia, and the remaining information was to be inserted, provided he approved. And I think if you read them in para materia, you will learn that that is the essence of what the conversation was about, and I apologize to the Senator for my misstatement.

Senator KERREY. Well, let me clear that up slightly, because the question that I was actually asking centered at least in part on that, but it was also that the following line or two, you said to Williams Borders, "The letters go out in the morning"——

Judge HASTINGS. That is correct.

Senator KERREY [continuing]. "To Columbia," and it was that that I was focusing on primarily. If there was need—which was the response you gave to Senator Rudman—for additional financial information before the letters could go out, why then did you say to William Borders that the letters would go out in the morning?

Judge HASTINGS. Then I think you need to read fully the cover letter to Hemphill, which I think explains why I was going to send it. All I can tell you, Senator, is really, please, that I did not at this point.

Senator KERREY. Thank you.

The CHAIRMAN. Senator Burns?

Senator BURNS. Just a couple of areas for clarification. When did you and maybe some of your colleagues, Mr. Borders or whoever—when did you start talking about those letters to go out and trying to get your friend back in a position where he could start making a living again?

Judge HASTINGS. Senator Burns, to the best of my recollection, when Bill Borders began being persistent about helping Hemphill, it would have been at the National Bar Association where we passed the hat for him in the room, and that would have been—and, sir, please allow that I don't know the exact date, but it was in July of 1981, and so it would have been about that time that I began having what amounts to active discussions with him in that regard.

Senator BURNS. Did Mr. Borders approach anybody else within the National Bar Association and ask them to propose letters in aid for Mr. Pride?

Judge HASTINGS. Not to my knowledge, Senator Burns.

Senator BURNS. Your relationship with Mr. Borders, of course, prior to October 9th, was very sincere. When you mentioned the time that Mr. Borders publicly was critical of you of having two law clerks that were Jewish in your office, I think you were very eloquent in stating that he just got after you pretty good on that.

Judge HASTINGS. Yes, sir.

Senator BURNS. When was that, do you remember?

Judge HASTINGS. That was immediately upon my being sworn in as a Federal judge, and we had it out about that and I told him what I thought my right was and what my responsibility was to my duties, and it did not destroy any association I had with him. I didn't like the fact that he criticized me that way, and I thought he was wrong, and I expressed it to him, and that was the end of it.

Senator BURNS. Did those clerks, did they—how long did they stay in your employ?

Judge HASTINGS. Lisa Goldstein stayed with me close to 2 years, and Alan Ehrlich stayed with me close to 5 years, so they stayed with me through my formative stages, and I think Lisa was gone—she may not have been there 2 years, just almost 2 years, but Alan was there almost 5.

Senator BURNS. And in relationship to when he made these remarks, would that allude that they stayed there full-term?

Judge HASTINGS. Yes, sir. Alan overstayed his term, and there is criticism of some judges who keep a clerk for a longer period of time. I happen to be of the school of thought that it's a wise thing to do when the person is of a mind to stay, if they are competent.

Senator BURNS. Thank you very much. Here again, I would like to associate my remarks—I appreciate your being very open and candid and I know this has been a grueling thing for you, and I can appreciate that.

Judge HASTINGS. Thank you, Senator.

Senator BURNS. Thank you, Mr. Chairman. That is all the questions I have.

The CHAIRMAN. Senator Lieberman, did you have questions?

Senator LIEBERMAN. I did. Thank you, Mr. Chairman.

Judge Hastings, just to briefly clarify first one factual circumstance. We talked earlier about the September 16th dinner at the

Fontainebleau. There were two occasions when Mr. Borders had mentioned to you that he was going to be there. One we talked about was on a Sunday morning, and then you said there was a second——

Judge HASTINGS. Yes.

Senator LIEBERMAN [continuing]. And I'm not sure about—I understand that it happened, did it, when you were coming back from Harrisburg?

Judge HASTINGS. In Washington.

Senator LIEBERMAN. You stopped in Washington?

Judge HASTINGS. I called him on the telephone locally.

Senator LIEBERMAN. You stopped at the airport, in other words?

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. You didn't do anything else in Washington, though?

Judge HASTINGS. I didn't go any place, just caught another plane and went on to Miami or Fort Lauderdale, whichever, I don't recall.

Senator LIEBERMAN. Understood. You called Mr. Borders just to say hello?

Judge HASTINGS. I called him, I'm sure, just to say hello. Senator, I'm tempted to say to reaffirm that he was going to be in Miami, but that is not my memory.

Senator LIEBERMAN. Understood.

Judge HASTINGS. All I know is that we did discuss that he would be there.

Senator LIEBERMAN. And you did talk to him directly on that occasion?

Judge HASTINGS. Oh, yes, I did.

Senator LIEBERMAN. And the content of the conversation was basically, to the best of your recollection of it, the same as you had had on Sunday morning, which was that he was going to be at the Fontainebleau at 8:00 o'clock, in the main dining room?

Judge HASTINGS. That, plus additional concerns about Hemphill, who had been through there during that same period of time.

Senator LIEBERMAN. Okay. Let me now go—and I like what Senator Rudman said earlier, and I want to pick up the same context, which is to ask you some of the questions that our fellow Senators are going to ask us. On the question of the letters, you've indicated that you spoke, in response to Senator Burns, probably from July through October 5th, when you wrote the letters, with Mr. Borders about helping Hemphill Pride.

One of the questions I think we are going to be asked is why did it take so long and take so many conversations? In other words, you both knew him, you both knew he was in trouble. Somebody is going to say to me, "I don't believe that it took these two friends that long to decide to help another friend."

Judge HASTINGS. Right. I think, in proper context, it would have to be set before the July period, where it would have been more intense, subsequent to the July period, Bill Borders and myself and other people helped Hemphill lots of times without his information, to the extent that he knew what we were doing or were about. But to try and help you when you are helping your colleagues, I ex-

pressed to him my concerns about the ethical matter, and he pestered me, he continued to persist that this was——

Senator LIEBERMAN. Ok.

Judge HASTINGS [continuing]. An all right thing to do, so some of the calls during that period of time would be like, "Oh, come on, you know, you can do that, nobody is going to bother with you," that kind of thing, and that's what it was about, Senator.

Senator LIEBERMAN. Ok. So, that's also your explanation and the one that I can convey about why it took from at least July to October for you to decide——

Judge HASTINGS. Because I resisted, and I ultimately did not, and as I have indicated, I think I did appropriately and I'm glad I did not.

Senator LIEBERMAN. Let me ask you this: Did the possibility ever arise that Mr. Borders should write the letters on Pride's behalf?

Judge HASTINGS. I think what was going on, at least in his mind, was because I was a judge, people would be more likely to respond.

Senator LIEBERMAN. Ok. Another question about this is why some of your other close friends—I believe Mr. McCrary indicated here that you had not talked to him or asked him to write letters or contribute money during this period of time to Hemphill Pride.

Judge HASTINGS. Yes.

Senator LIEBERMAN. Why didn't you?

Judge HASTINGS. Because this was not formed, and I'm sure that Jesse, as well as Delano and Warren and Althenia and others in Florida, Willy Gary, all would have been on this list if we had gone forwards, but that's why—and I think, in addition to that, that Bill Borders and myself were doubtless closer to Hemphill than would Jesse be——

Senator LIEBERMAN. Than McCrary would have been.

Judge HASTINGS. Yes.

Senator LIEBERMAN. So, it is because you had not yet decided yourself whether it was appropriate for you to solicit funds for Hemphill Pride, that you did not speak to other friends who some might think you normally would have talked to, like McCrary?

Judge HASTINGS. I knew it was inappropriate, Senator, and I really did consider going on and doing it, because sometimes we create these constraints, and it disallows the human quality to come forward, and that's my answer to you, sir.

Senator LIEBERMAN. Ok. Let me go to the October 5th conversation when the business about "he wrote some things down." You've indicated that your hearing of that was that it was financial information regarding Hemphill Pride. Did I understand you to say that what you were thinking—you made some reference to bad debts or bad judgments against him. Is that what you were interested in, and, if so, why? Why did it affect what you——

Judge HASTINGS. Well, I didn't know and didn't learn until much later that Hemphill had the kind of serious jeopardy that he did in having to meet requirements, I believe nearly $100,000 or even more, Senator, that he had to pay off before he could get straightened out with his licenses, and so I didn't know all of the details, and I was being given the impression that he was sharing those details with Borders. He was not talking with me about it, and maybe

for the reason that previous to that time I had rejected him, but I did other small favors for Hemphill in the interim.

Senator LIEBERMAN. How would that have affected your decision—somebody is going to ask me—to write the letters or not? What if you found out that he did owe $100,000, would that have affected whether you would send the letters out? Is that why you were asking Borders in that conversation whether he had spoken to Pride?

Judge HASTINGS. Senator, I don't want to be dishonest at all and I think I've tried to be very honest and truthful. I think that that would change my overall judgment, but I still believe that I would have refused to go forward.

Senator LIEBERMAN. Let me just see if I can follow those letters. I don't know if I have a few minutes more. You wrote the letters on the bench on October 5th.

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. To the best of your recollection, you then had some doubts, that's why you didn't send them out. You put them in the top drawer of your desk.

Judge HASTINGS. I don't know whether it was the top drawer. I put them in a drawer, Senator.

Senator LIEBERMAN. OK. Then, obviously, nothing happened to them between that time and the day that Bill Borders was arrested, I take it?

Judge HASTINGS. That is true.

Senator LIEBERMAN. Can you date generally when you remember that they were in the desk and when you pulled them out?

Judge HASTINGS. I don't remember exactly when I pulled them out. When I first went back to the office, after Borders 'arrest, I don't believe I even thought about it at that time, Senator. But I know when I read the Miami Herald article, it became a concern. I can't—I'm trying, I cannot pull up in my memory the exact time.

Senator LIEBERMAN. What article is it that you are referring to?

Judge HASTINGS. It was either the—I believe it was October 11th, and they had all of the details of what we are here about.

Senator LIEBERMAN. Shortly after the arrest, then?

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. Within a week or so?

Judge HASTINGS. Yes, sir, but I don't remember when, but in all fairness, Senator Lieberman, in my effort to try to tell you, I really at that time did not place all of the crucial emphasis that I understand has been placed on the matter and that I accept. I didn't put that kind of emphasis on it.

Senator LIEBERMAN. I understand that. To the best of your recollection, when did you give them to attorney Mavrides?

Judge HASTINGS. It would have to have been November or December or thereabouts.

Senator LIEBERMAN. OK.

Judge HASTINGS. Senator, I just can't remember the exact time.

Senator LIEBERMAN. I am just trying to give some sequence to it.

Judge HASTINGS. He was not my only lawyer. Even though she had not surfaced, Patricia Williams was in from the beginning of this matter——

Senator LIEBERMAN. Right.

Judge HASTINGS [continuing]. And she, too, had some understanding in that regard.

Senator LIEBERMAN. So, the odds are that Mavrides would have had these letters toward the end of 1981, November or December 1981?

Judge HASTINGS. No question.

Senator LIEBERMAN. OK. And they remained there. Borders was tried in March 1982, I gather.

Judge HASTINGS. That is correct, Senator.

Senator LIEBERMAN. And it is your testimony here today that you presented the letters to Mavrides—I'm sorry, to Borders' attorney, Shorter——

Judge HASTINGS. At some point in time, here in Washington, DC.

Senator LIEBERMAN. So, you would have retrieved them from Mavrides' safe in the early months of 1982?

Judge HASTINGS. That is when the second foray of discovery opened up. Senator, I only reiterate for purposes of emphasis for you and for the other Senators that there were a lot of other things that were exchanged, that if we were to isolate on any one of them coming from either side, they too could be considered crucial matters that did not come into play again until after the stay was lifted. I recognize and accept the fact that this is considered among the more crucial things, but we simply had other discovery matters going both ways at that time.

Senator LIEBERMAN. I understand. I have reached my limit on time. I just want to ask one more question. I assume that you did not—let me ask the question. Did you present them to attorney Shorter, Borders' attorney, in response to a subpoena *duces tecum*?

Judge HASTINGS. Oh, no, I was never subpoenaed about them at all by him.

Senator LIEBERMAN. OK. So, you presented them voluntarily?

Judge HASTINGS. I certainly did. And when I say presented them, I talked with John Shorter about that particular matter, the letters, and they were with me and Shorter's statement, either to the FBI or somebody, was that he remembers seeing papers on a yellow legal pad that may have been some letters but he had no interest in them. That is I believe the way he characterized it at that point in time and that's what he manifested to me, Senator.

Senator LIEBERMAN. Thank you.

The CHAIRMAN. Judge Hastings, you have been the one having to answer the questions. We have been going about an hour-and-a-half now. Did you wish us to take——

Judge HASTINGS. If it is the desire of the Chair or——

The CHAIRMAN. We can keep asking questions until——

Judge HASTINGS. I always like to have a recess, Mr. Chairman.

The CHAIRMAN. We will take a 10-minute recess.

[Short recess.]

The CHAIRMAN. The committee will come to order.

[Pause.]

We are waiting for counsel for Respondent. I guess we do have a rollcall vote which will require us to——

The VICE CHAIRMAN. Let's go vote.

The CHAIRMAN. I think, in light of the fact that the rollcall vote has just been called, Judge, we will extend our recess for another 10 minutes while we go vote.

The committee stands in recess.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Judge Hastings, I have no additional questions at this time and I will defer to Senator Specter to ask questions.

Judge HASTINGS. Thank you, Mr. Chairman.

The VICE CHAIRMAN. Judge Hastings, picking up where you and I left off the last round, the absence of the letters in the trial of Mr. Borders was very important, according to the closing statement, and had those letters been introduced in evidence, the Government's contention on the important conversation of October 5th would have been undercut, where there was a contention that it was code and it related to the *Romano* case, which was the subject of the alleged bribe offer, so that had the letters been presented, it might have, would have perhaps—we can't be sure, might have is perhaps as accurate as you can be, generalizing—Mr. Borders might have been able to show that, in fact, he was not in a conspiracy with you.

That would have still left him subject to possible liability for a scam for obtaining money under false pretenses, perhaps violation of the Travel Act or mail fraud or some other fraudulent provision, but he couldn't have been convicted under the indictment which charged him with the conspiracy with you on a bribe effort.

Why didn't you pursue the matter and, in your discussions with Mr. Shorter, point out to him how important this evidence was, which might well have resulted or might have resulted in acquittal for Mr. Borders?

Judge HASTINGS. Senator Specter, I have picked up the information—could you hand me that—excuse me, sir—from Volume 7 of the IC testimony, at page 173, Mr. Shorter was asked by Judge Godbold, "Mr. Shorter, I'm still referring to your conversation with Judge Hastings about the letters. Did you recognize that the letters, if admissible in evidence, would also be, in the Borders' trial would be exculpatory of Mr. Borders?" And he answered, "Yes"—Shorter did—"based on the conversation that was on the tape." And Judge Godbold said, "On the tape?" and he said, "Yes." "Did you ask Judge Hastings if he was willing to appear and testify in the Borders' case and authenticate the letters?" And Shorter responded, "Judge Hastings would not have been the one that I would have asked. At the time, he had counsel and I don't know whether the question ever came up with his attorney, but—and if it did not, it was because I had concluded in my own mind that any responsible attorney representing the Judge would not have favorably received my request.

Judge Godbold then said, "You were willing, I take it, then, to discuss the letters with him, but you were not willing to discuss with him the use of the letters." And Mr. Shorter responded, "Actually, I didn't discuss the letters with Judge Hastings, he produced the letters. He sort of, I won't say forced them on me, but, you know, they were produced." And the conversation about the letter followed, and Judge Godbold interrupted him and said, "And you

recognize their usefulness to your client's cause?" And he responded remotely, "Yes"—and without boring the Senator or using his time, I think that is confirmatory of at least my attempt to bring it to Shorter's attention.

The VICE CHAIRMAN. Well, I have to—I was about to disagree with you when you said "confirmatory," but perhaps it was confirmatory that you brought it to Mr. Shorter's attention, but candidly, Judge Hastings, the rest of it doesn't make any sense to me.

I have read this testimony and a good bit of other testimony that Mr. Shorter made, and it is incomprehensible to me that a trial lawyer would not look at these letters to see their import, especially in the context of what happened in the case, how important they were, in the prosecutor's closing argument. But Mr. Shorter's not here to question, but the question in my mind for you that I am pursuing is, is why didn't you do more?

There's no showing on this record, on this record the long and short of it is that Mr. Shorter saw the yellow pieces of paper, didn't pursue them at all. He didn't make any effort to ask you if you would authenticate them, he didn't make any effort to get a stipulation from the prosecutor, which might have been a possibility, and in that context you didn't say to him, "Mr. Shorter, these are very important letters," you didn't take any step beyond watching him look at the letters and, according to this testimony, make a very casual reference to them and, as important a matter as this is, it just draws a big question in my mind, where had the prosecutor had this evidence in his file—and you and I discussed this very briefly, we didn't have much time to go into it—had the prosecutor not made this evidence available as exculpatory evidence, under the decisions there would have been a grounds for reversal, there would have been prejudicial error, and that's why I am so surprised that Mr. Shorter didn't pursue it, and I'm also surprised, perhaps more surprised that you didn't say to Mr. Shorter, "Hey, take a look at these letters, this is what they mean. This man didn't conspire me. When they are saying that this conversation is a code, that isn't so, these letters support the contention that we were talking about Mr. Hemphill Pride." Why not, Judge Hastings?

Judge HASTINGS. Senator, I'm not certain and I don't want to represent to you that I have a memory that I did or did not say that to Shorter, but I had the letters with me and I showed them to him. I don't know how I could have done anything any more. I represent to the Senate what I said previously: I don't think that any real strong effort was made by Mr. Shorter or Mr. Borders to try to gain an acquittal, other than character evidence, it does appear to me.

I was not a cooperating person with Borders or Shorter's concerns. I was trying to gain information for myself and to help myself. I agree with the Senator with regard to had the prosecutor had them, but I don't believe the Senator believes that the prosecutor would have used them in the prosecution.

The VICE CHAIRMAN. Obviously not, they were exculpatory. But back to the question where you disagreed before, and let's pursue it for just a moment, had the Government failed in its prosecution of Mr. Borders, I submit to you, Judge Hastings, that, given his arrest

in possession of $125,000, and given the positive evidence that he obtained $25,000 before, and had the Government lost the case against Mr. Borders because they could not provide that there was a conspiracy with Judge Hastings, which those letters might have gone a long way to do, I suggest to you that it would have had enormous tactical advantage to you, that if they couldn't convict Borders in a case with that quantity of evidence on a conspiracy against you, how in the world would they have proceeded even to try you?

Judge HASTINGS. I agree with that, Senator.

The VICE CHAIRMAN. Then why didn't you make the letters available, push them, see to it that Borders had this very important evidence that would have helped him and would have helped you, as you just concede?

Judge HASTINGS. Even though the Senator reads the record differently, I think in part Mr. Shorter was saying that I was coming forward and trying to get him to use them.

The VICE CHAIRMAN. Judge Hastings, you know how to come forward. When you come forward with purpose of intent, it is very forceful. This record does not show that at all. And you are saying that, even though it is as important a piece of evidence as is present, given the collateral circumstances on this important conversation of October 5th, that you do not recall whether you had a conversation with Mr. Shorter about the details of the letters or about their tactical significance in the case.

Judge HASTINGS. When I presented it——

The VICE CHAIRMAN. You say you just don't recall.

Judge HASTINGS. When I presented it to him, obviously he had no interest, Senator. What was I supposed to do?

The VICE CHAIRMAN. You should have said, "Mr. Shorter, read these letters, let me explain it to you, let me tell you how important they are. This will show that I was not involved in a conspiracy with Borders, and if I'm not involved in a conspiracy with Borders, he could not have been involved in a conspiracy with me and, whatever else he might have done, that indictment is defective and let's win this case for Borders because it will help me."

Judge HASTINGS. Not on the basis of the letters, but I certainly said words to the effect that he didn't conspire with me and I was, among other things, available to testify. As a matter of fact, Senator, en route to Baton Rouge, Louisiana, I stopped in Atlanta and so much as had Mavrides indicate that I was available if they needed me as a witness and they chose not to utilize me. I was not representing Bill Borders, I was concerned about myself, Senator.

The VICE CHAIRMAN. Judge Hastings, how did it happen that you made these letters available to Mr. Shorter, the attorney for Mr. Borders, but didn't make them available to your own attorney, Mr. Hirschhorn?

Judge HASTINGS. Mr. Hirschhorn and I had a disagreement, Senator, and we are running back into the same period, but I don't want to—I'm here to try to testify truthfully. Joel and I didn't have a meeting every day. We only met a couple of times and my disenchantment arose by virtue of the fact that I wanted to met the prosecution in the courtroom without a lot of exchanges between the lawyer and the prosecution.

Mr. Hirschhorn was not my only attorney. I also was representing myself and that was from the beginning. Contrary to how one might think that one should be involved, perhaps I do not feel that one should not get involved in their own defense, and I'm glad I did get involved, and so Joel and I didn't agree on things. But the memo that I offered to the Senator, even in his own work product to himself, it isn't until his 28th item that he mentions any kind of letter and then way on down is when he identifies the October 5th call, and that's just how he was working.

Senator, we were not placing all of the emphasis on these particular letters or the tape, and I don't even recall for a very long time whether I even heard the tape itself, but I knew of the importance of these matters at some point in time, and not to have given them to Hirschhorn, to my way of thinking, is of no real importance because he didn't continue in my representation.

The VICE CHAIRMAN. It's a very interesting answer, but it doesn't relate to my question.

Judge HASTINGS. Well— —

The VICE CHAIRMAN. My question was, for whatever significance they had, for whatever importance they may have had, wherever they stood in the hierarchy of things, why did you call them to the attention of Mr. Shorter, the other man's lawyer, and not call them to the attention of your own lawyer?

Judge HASTINGS. That was sometime subsequent to my meeting with Joel Hirschhorn, wherein he reduced and memorialized what he and I talked about, Senator.

The VICE CHAIRMAN. Well, you made these letters available to Mr. Shorter in March 1982, didn't you?

Judge HASTINGS. That is correct, but you just got through saying to me that I did something by not doing more to give them to Shorter. I was not about the business of running around—we have a lot of things that we were trying to do. The letters were in existence. There was no great big problem. Is the Senator suggesting to me that I would have to—I think you would agree that by November 1981 I would have to have known that the letters were important, and what would have been wrong with me, if I was going to fabricate something, Senator, doing it right then. I don't understand how we are working this, and it is only because I didn't turn them over to the Government, who didn't turn a lot of things over to me until later.

The VICE CHAIRMAN. I will give you an answer to that. The letters didn't come into sharp focus until Borders had his trial, and in Borders' trial the letters came into sharp focus, where were they, and that is a key factor why Borders was convicted, and you had the discovery turnover in mid-February 1982 and you have Hirschhorn quitting and a question is raised as to whether Hirschhorn resigned because he was dissatisfied with not having access to evidence or evidence being fabricated, and then at a later date the letters are constructed, written in a careful way and not made available to the Government until December 1982.

Judge HASTINGS. Senator, that scenario simply does not fit what the evidence is and the facts are. Let me offer to the Senator that the letters came into focus and Joel Hirschhorn didn't do the Title III piece, Jay Hogan did, who was involved in my representation

and associated with Professor Blakey with reference to that, and the letters came into focus and, I assure you, Jay was meticulous. He had boxes of tapes, and that's when they came into focus. It wasn't as late as the Borders' trial, as the Senator has related.

The VICE CHAIRMAN. My time is up. Thank you.

The CHAIRMAN. Senator Leahy?

We do not want any reactions from the audience through this, or we would have to take steps to clear the audience. We have been very fortunate without having reactions and we would appreciate it if they could bear with us for another hour or two here.

Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

I might also note that the Senators are most interested in the testimony, certainly that of Judge Hastings, primarily, and the cheering section either way for either side is probably—well, it would be distracting to the extent that most of us try to put that out of our mind, because it tends to go opposite the person, rather than the other way around.

Let me talk a little bit on those letters, and you are probably tired of hearing about them, Judge, but Senator Lieberman talked to you about it and you said, I believe, in answer to a question that Senator Lieberman asked that you recall giving the Hemphill letters to Mr. Mavrides at the end of 1981, either November or December. Is my recollection of your testimony correct?

Judge HASTINGS. Senator, it is very difficult for me to pinpoint the time, but at some point in time they were placed in Andy's safe.

Senator LEAHY. But that was around the end of 1981?

Judge HASTINGS. I would safely say that it occurred during that period of time, Senator.

Senator LEAHY. And then you produced some yellow pad papers for Mr. Shorter before the Borders' trial, and that was in early March 1982, is that correct?

Judge HASTINGS. Here in Washington, the only way that I can pinpoint the day is, as I said to the Senator, it was snowing and I got my feet wet and I caught a cold.

Senator LEAHY. Now, I have a yellow pad here which could be anything, but are you saying that the yellow pad papers that you showed Mr. Shorter before the Borders' trial, those were the letters?

Judge HASTINGS. These same exact documents that are in evidence as a House exhibit, Senator.

Senator LEAHY. So, to short them to Mr. Shorter, you had to get them back from Mr. Mavrides, is that correct?

Judge HASTINGS. That is correct, sir, and at that time Mr. Mavrides was not completely unraveled, as he ultimately was.

Senator LEAHY. So, let's—we are in the pre-unraveling time—how did you retrieve those? How did you retrieve the letters so that you could show them to Mr. Shorter?

Judge HASTINGS. From Andy.

Senator LEAHY. But tell me how.

Judge HASTINGS. I told him I wanted them and I'm pretty sure——

Senator LEAHY. Pardon?

Judge HASTINGS. I told him I wanted them and I'm pretty sure he produced them at that time.

Senator LEAHY. Did you just walk over and get them or did he bring them to you, or did you send somebody after them?

Judge HASTINGS. I don't remember, Senator, I really don't.

Senator LEAHY. But they are fairly critical.

Judge HASTINGS. Yes.

Senator LEAHY. These letters are pretty important.

Judge HASTINGS. All I can say to you is what I remember, Senator, but I'm sure that I got them from him and I'm sure that when I got them finally I got them from his safe.

Senator LEAHY. But the first time you got them, you got them just from Mr. Mavrides, but you don't remember how you got them?

Judge HASTINGS. Other than—I can't imagine that anybody else could have had the combination to his safe and him making them available to me.

Senator LEAHY. OK. So, that would be before March 1982, before the Borders' trial?

Judge HASTINGS. That would have been before the Borders' trial, Senator.

Senator LEAHY. When did you bring them back to Mr. Mavrides?

Judge HASTINGS. I don't have a distinct memory, but I have a distinct memory of getting them and having very, very difficult times getting him to open the safe, and I got them at night, almost like going through somebody's stuff that you shouldn't do.

Senator LEAHY. Now, which time is that you're referring to, by getting them at night?

Judge HASTINGS. That was when the discovery period opened later, and by then Andrew's complications were in full bloom.

Senator LEAHY. And when was that?

Judge HASTINGS. Senator, I can only pinpoint—and there's an item of evidence indicating the receipt that Mr. Weingarten signed, and whatever date that was, it would have been in advance of that period of time, but probably real close to it. But as to a distinct memory, I have been asked about things and I've tried to recall things that happened 8 years ago and I think I've done good on some, but I just don't have a memory of everything.

Senator LEAHY. I believe we have in the chronology that you had produced those so-called letters for Hemp in mid-December 1982.

Judge HASTINGS. That is when they were turned over to the Government, whatever date that was, Senator, and shortly before that would have been when I went into the office, and I——

Senator LEAHY. By shortly, you mean like a day, two days, three days, that kind of shortness? Not months?

Judge HASTINGS. Senator, I don't know. It wouldn't have been months, no, sir.

Senator LEAHY. OK.

Judge HASTINGS. It would have been around that week and thereabouts. The only reason that I am talking about it is it made me feel strange to take things out of—not just these letters, they were mine, but there were other things that I tried to protect Andrew about that were his personal matters that were strewn in the room.

Senator LEAHY. He was still trying cases at that time, in late December 1982.

Judge HASTINGS. No. If he was, he was showing up very infrequently. Judge Franza during that period of time—that may have been when he got help in contempt, but Andy was having severe, severe problems by that time, Senator.

Senator LEAHY. Why didn't you just say, "Look, Andy, I need those papers, can't you meet me down at your office, can I just come in there and get them, in daylight hours?"

Judge HASTINGS. At that time, that was happening, Senator Leahy. I want to leave Andrew's memory intact. He was having—please, sir, understand—a lot of difficulties and I knew what those difficulties were. He was not functioning, Senator, he was not functioning.

Senator LEAHY. Keeping in mind what at least your understanding of those difficulties were, without going into that, didn't you have any concern going into that particular office, in the middle of the night, nobody else around, to get something out of the safe and possibly, in the dark, going in that building, being mistaken——

Judge HASTINGS. No, Senator.

Senator LEAHY [continuing]. Being mistaken for Mr. Mavrides?

Judge HASTINGS. No, sir, I had a key and all of our matters, files and everything else were reposed in that office. Even after Andrew got put out of the office in some fashion, his lease was not continued, Patricia Williams and I continued to work out of that office, and his former associates even let us continue to make phone calls free, in an effort to help us, so we worked out of that office. The secretary——

Senator LEAHY. Did you have the combination of the safe?

Judge HASTINGS. No, sir, I did not. As a matter of fact, he opened the safe and advised me of same, and when I went there, it was in the night and I told you that his safe had been rummaged and——

Senator LEAHY. My last question——

Judge HASTINGS [continuing]. And some of that stuff is just personal and——

Senator LEAHY. I understand. And he advised you—how close, between the time he advised you the safe was open and the time you went in there to the open safe and retrieved the letters?

Judge HASTINGS. I would think it would have been, if I were to pinpoint on whenever Jeanette Montee turned them over to Reid Weingarten, it would have been right in that ambit of time, it couldn't have been more than two or three days.

Judge Leahy. Judge, if these letters were so important and so exculpatory, he says he has opened the safe, the safe is sitting there open and these letters could be picked up by anybody, destroyed by anybody, why didn't you, the second you heard that, say, "My god, stand right there by the safe, I'm coming down and get those letters, because that's my salvation"?

Judge HASTINGS. Because I had no fear that anybody was going to invade the man's office. That was not my belief. There was nothing to demonstrate that. There was nothing to demonstrate that.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Judge, I didn't really expect, when we started into this, that I would be asking as many questions as I am asking. I have come to the conclusion during the course of the day that it's largely because of a conversation that you had with Senator Specter a little while ago, in which you I imagine appropriately said something to him about the fact that it wasn't really fair for him to try to judge some particular behavior of yours on the basis of the way he might behave or the world that he might have observed. And I think as I have observed the difficulty expressed here in the questions on all of these issues around this table, the difficulty that people are going to have on this committee, to say nothing of the people who are not on this committee, is going to be whether or not and how far they are going to walk in your shoes versus walking in their own when they go through this kind of material.

We don't have an awful lot of opportunity to walk in yours, so I think that's why you're getting the kinds of questions and why some of us don't appreciate some of the reaction out there in the audience to questions that may sound like they're tough, they're accusatory or something like that, but they really deal with the fact that there are some perceived differences for some of us who have only walked in our own shoes——

Judge HASTINGS. I understand.

Senator DURENBERGER [continuing]. To how you may have acted or reacted, and I come back to where I left off. A week or two ago, I asked you, when we were on Article XVI, I asked you about a reaction to the information you were given that the Mayor of Dade County was involving you in some way or another, and your reaction was, "Only to see the Chief Judge," and I think you mentioned it to your mom or something like that and that was about it, and that was so at odds with what I thought was a normal reaction, but I have to accept it as your reaction to the Federal judge finding out that some mayor is, in effect, entrapping him.

Now, going back to October 9th and where I left off, Hemphill Pride has just told you that Borders has been arrested by the FBI and it has something to do with an alleged bribery that has something to do with your courtroom. Your reaction, as I understand it, is to go to your room and make two telephone calls, one of them to Patricia Williams, and I wonder if you wouldn't elaborate on, at least to me, a rather confusing existing record as to that telephone conversation.

All I can find in the record is that you said you made the call, that you reached Patricia Williams at—it looks like at an office of the Economic Opportunity Commission here at Dupont Plaza or something like that, "I learned you had been interviewed by the FBI"—can you elaborate on what you said to her and what she said to you in that conversation?

Judge HASTINGS. I think the record will reflect that she was interviewed by them and they asked whether or not I had——

Senator DURENBERGER. Is she saying this to you—you are on the phone at your room at the L'Enfant Plaza now, and you've identified Patricia Williams at the other end of the line?

Judge HASTINGS. That's my best memory, Senator.

Senator DURENBERGER. What did you say to her and what did she say to you?

Judge HASTINGS. I was calling for the express purpose of—first off, she was not the first person that I called. I called my mother first, and then when I called her, I was calling her to tell her what I knew at that point in time. Then she advised me what she knew at that point in time, and among the things was being queried about whether or not I had a lot of money, a second home, a yacht, and had gone to dinner with her at a certain place in time, and a few other matters.

Senator, as I've searched over and over about all of these events, I subject myself to being human and I only do that for the reason of hoping that you can assist in allowing me to humanize the process. For example, I did not use the analysis, as you put it, with Senator Specter. I used it in an all too confrontational situation for me with Senator Kerrey about the analysis, and I agree with you that it is going to be difficult for Senators to walk two miles in my moccasins, and I clearly understand that.

But, sir, in reviewing it, like I reviewed the call to Barbara Katzen, and there are no calls there at the L'Enfant Plaza, I don't want to retreat, as Mr. Baron asked a couple of days ago or yesterday whether I was retreating from my testimony. I was answering, in 1983, what I thought to be the circumstances and I don't believe that I stood to gain one thing at all by introducing any telephone calls at the L'Enfant Plaza. It was my memory as I understood it and I've gone a long ways to say that the interview evidently was in progress and those things are what Patricia said.

Senator DURENBERGER. But the additional information you got relative to your own condition at that time was from Patricia Williams to the effect that she was at that moment being interviewed by the FBI with regard——

Judge HASTINGS. I am really not certain that she said that to me. I really am not, and all I can tell you is at a point in time during the day of October the 9th, I learned from Patricia and my mother circumstances that led me to have further fears. I don't count that as causing me to leave under what I have agreed inferences that could be drawn that they have been.

I was going to go home, Senator, and that's what I wanted to do, and that's what I did. Patricia and my mama and Hemphill, or anybody else, wouldn't have been able to control my destiny such that I would have accepted or needed all of their advice. I was seeking information at home, and more pertinently to know that my mom was all right. That's what that was all about. If that doesn't satisfy the Senator, that's what it was all about.

Senator DURENBERGER. It doesn't—I can't say that all by itself it satisfies me, which is why I was looking for more information from Patricia Williams.

Judge HASTINGS. I understand.

Senator DURENBERGER. I mean, here is a Federal judge finding out that there was some bribery in his courtroom, or something like that, doesn't run up to BWI and head for Florida.

Judge HASTINGS. Well—I'm sorry.

Senator DURENBERGER. And I'm not following the two phone calls as emotional flight, I'm following the reality that a Federal

judge doesn't react that quickly unless there's something more to the information that he has received than is in the record.

Judge HASTINGS. When I was talking with Senator Kerrey, I offered that things are different for some people, Senator Durenberger, and I believe that it is more than reasonable for you to believe that a Federal judge should have done something different. But I don't believe that there are too many Federal judges in the United States of America that have had the experiences that I had had previous to that time, and I stand here on the evidence and the facts, and I've said repeatedly that I didn't want to inject into these proceedings anything having to do with my background. I want to stand on the facts and either fail on them or go forward on them or to continue as a United States District Court judge.

Senator, things just are not the same for me as they are for members of the United States Senate in America. I beg the chairman's indulgence, and I would respectfully ask the audience to please refrain from commenting. I am not trying to be melancholy. I'm trying to be factual without introducing a most unnecessary element to what I perceive to be an extraordinarily fair proceedings.

Senator DURENBERGER. Is there any evidence in the record during the course of the time between October 1979, when you became a Federal judge, and October 1981 that the FBI or any other agency of the Federal Government, for whatever reason, was putting you in some danger as far as your reputation is concerned or your record as a judge?

Judge HASTINGS. There is no evidence to that effect, Senator Durenberger.

Senator DURENBERGER. Thank you.

The CHAIRMAN. My information is that Senator Pryor did not have additional questions.

Senator Rudman, do you have additional questions?

Senator RUDMAN. I have no other questions.

The CHAIRMAN. Senator Bryan?

Senator BRYAN. No questions.

The CHAIRMAN. Senator Bond?

Senator BOND. I have no other questions.

The CHAIRMAN. Senator Kerrey?

Senator KERREY. No questions.

The CHAIRMAN. Senator Gorton?

Senator GORTON. Who is the person named Mitchell who ultimately paid the L'Enfant Plaza Hotel bill?

Judge HASTINGS. Senator, I don't know that person. But I think, I think that the best way I can handle that is to tell you that Andrew Dancey, who is a dentist, has said—and he lives in Memphis, Tennessee, he is Ben Hooks'—the President of the NAACP—brother-in-law, and Andrew and I went to Fisk University together, and he has since told me that a white gentleman, and I don't know whether his name is Mitchell or not, is the person that paid the bill. I truly have never met the person, nor have I ever spoken with or know the circumstances surrounding it.

There were several strikes in there, like there was one about Ken Shuttlesworth, or something like that, and the answer to your question is I don't know the Shuttlesworth, and I don't know the

Mitchell. I know the person very well who I thought had paid the bill based on the conversations afterward, and that was a fellow by the name of Richard Plenty.

But I've since learned and believe, if Andrew is correct, that it was not Richard Plenty, it was someone else that paid the bill.

Senator GORTON. Judge Hastings, on another subject. I count on the various exhibits between March and October roughly 20 telephone conversations either initiated by Bill Borders to you or by you to Bill Borders, some of which simply resulted in messages. These are the ones of which we have records.

Can you give me any rough estimate as to how many times, in fact, you did call Bill Borders or Bill Borders called you in that roughly seven month period? Is this all of them or a quarter of them, or just the roughest possible estimate how often were you talking to one another on the phone?

Judge HASTINGS. I believe, Senator, that at least half of that amount again, and maybe more, were calls that were made either by Borders or myself, but not always from either Washington or Florida. I believe that there were more calls.

Senator GORTON. And I believe you testified earlier—I just want to check on this—that in all or almost all of those conversations in that seven month period, a subject or the major subject was Mr. Pride.

Judge HASTINGS. Beginning around July, I would think that in almost every instance at some point we discussed Pride and trying to help him.

Senator GORTON. In the year 1981 or in either of the other years in which you were a Federal District Court judge, did you ever travel from Washington, DC to Miami or Fort Lauderdale by way of Baltimore?

Judge HASTINGS. I believe I did, Senator. I just—are you saying in the year 1981?

Senator GORTON. Or, for that matter, let's take from the time you became a judge and started living the kind of life that you are now.

Judge HASTINGS. I have been out of Baltimore before. I have been out of Dulles before. Time frame wise, Senator, I can't fix it for you.

Senator GORTON. That's all I have, Mr. Chairman.

The CHAIRMAN. We have another vote that's been called on the Senate floor.

Senator Lieberman, do you have questions that will last beyond the halfway mark?

Senator LIEBERMAN. No.

The CHAIRMAN. Why don't you go ahead then?

Senator LIEBERMAN. Very briefly, Judge, this is the third day you have been on, you wouldn't be human if you weren't tired by now, and I want to just clarify an exchange that we had before about the dates regarding the letters because I am confused myself.

I want to ask you whether you specifically recall obtaining those letters from Mr. Mavrides in advance of your meeting with Attorney Shorter that must have been around March 1982? And I take it that that was not the time you went in at night; am I right or wrong on that?

Judge HASTINGS. No, sir. That was not the time.

Senator LIEBERMAN. OK.

Judge HASTINGS. It would have been nearer the second opening of the discovery after the stay was listed that I went into the office, and I had been in the office at night before. I just had never been in that setting where the safe had been gone.

Senator LIEBERMAN. This is where I'm confused because I believe the second wave of discovery in your case occurred in November or December 1982.

Judge HASTINGS. That—all right.

Senator LIEBERMAN. Am I correct, so that you would have had to——

Judge HASTINGS. Bring them back.

Senator LIEBERMAN. Get the letters, bring them back to Mr. Mavrides——

Judge HASTINGS. Sure.

Senator LIEBERMAN. And then go back on that night to get them as part of the second wave of discovery.

Judge HASTINGS. Sure. That's what happened, Senator.

Senator LIEBERMAN. OK. I want to clarify something else that I believe you said to one of the other Senators, which is that your recollection is that you had Mr. Mavrides make an offer on your behalf to make yourself available to Mr. Borders to be called as a witness at his trial.

Did I hear that correctly?

Judge HASTINGS. I am pretty sure that it was made aware to them. I did not talk with John Shorter during Borders' trial, and I did not talk with Borders, but I did have it clearly understood that I would be available.

Senator LIEBERMAN. OK. And one final question, if I may, because we have gone at the business of the letters in a lot of different ways, and I suppose there is a time limit as to when that next bell rings, but I want to ask you what you would have me answer to my colleagues when they say to me, "Look, the judge must have known late 1981, early 1982 at the latest that the conversation of October 5th about the letters to Hemp was critical. Why is it that he did not produce the actual letters until November or December 1982?"

Judge HASTINGS. Because——

Senator LIEBERMAN. "Did he fabricate?" That's what they will say to me.

Judge HASTINGS. Yes, sir.

Senator LIEBERMAN. OK.

Judge HASTINGS. I would ask you to say to them, my brother or my sister colleague, I believe that the evidence at least if constructed as Al Hastings would have us believe it would demonstrate that he did not think that the letters themselves were going to have such critical significance as he is capable of looking back at it from 1989 or 1983 or at any other point in time during the pretrial states, and the reason that he didn't, as he put it, is because he thought that the test that could be run on the letters that were ultimately, in fact, run on them would produce the direct point in time when the letters were prepared, and I honestly thought that

was the case and that it would clearly demonstrate that the letters were written at a certain time.

I didn't have all of the information regarding the technology that I now know from Mr. Cantu and the other gentleman who reviewed the letters, but that was my feeling at that time.

I've used at another point in time, and I would urge that you urge upon your colleagues that I didn't think that I was violating any discovery, nor did I think any of my attorneys were violating any discovery, and I believe that, because of the impeccable credentials of Judge Gignoux, that had there been such a violation I seriously believe—and he presided incidentally in the Borders' trial as well as in my trial—I believe that Judge Gignoux would have issued the appropriate sanctions either to me or to the prosecution.

And in that sense, I would hope that you would urge that upon them in their consideration of the other inferences that can and rightly reasonably should be drawn.

Senator LIEBERMAN. Thank you, Judge.

Thank you, Mr. Chairman.

The CHAIRMAN. We will stand in recess for about ten minutes while we vote.

[Recess.]

The CHAIRMAN. All right. I do believe there are still a couple of Senators with questions. So we will stand in recess and come back in ten minutes.

[Recess.]

The CHAIRMAN. The committee will come back to order.

Let me advise counsel for Respondent and counsel for the House that our plan at this time is to go till 5:30, as we had originally scheduled, and return at 7:00 and complete whatever there is to complete at that time. If there are any additional questions at that time, we will complete that.

Following that, we'll got to a final summary by both the House counsel and Respondent's counsel, and any final procedural matters.

I have no additional questions.

Senator Specter, you had some additional questions.

The VICE CHAIRMAN. Yes. Thank you, Mr. Chairman.

Judge Hastings, I compliment you on being a very resilient witness. I think back about the old cases as *Ashcraft* v. *Tennessee, Chambers* v. *Alabama*, relay questions, I think this has been an extraordinary, extraordinary proceeding with the kind of attentiveness and the kind of questions and the Senators have been asking really what is on their minds trying to focus in on areas of concern, and we are going to have some legal arguments. Professor Anderson has asked for questions, so I am reserving some of the questions that I was going to ask you for him, and I'm going to wrap up in this portion.

There's a considerable interest here to conclude by 5:30, and I think that's fair generally as well as under the Eighth Amendment. So just a few questions.

Judge HASTINGS. Thank you, Senator.

The VICE CHAIRMAN. Judge Hastings, you had commented about Mr. Shorter's testimony before the Investigating Committee and had cited some testimony about page 173, and I had wondered if

you had noted his testimony at page 162 where he said in 1984 that he, "had a strong feeling that Judge Hastings would not have offered himself as a witness in Mr. Borders' case"?

Judge HASTINGS. Um-hum.

The VICE CHAIRMAN. Are you aware of that testimony?

Judge HASTINGS. I am not aware of that.

When I offered what I did, it was in response to the Senator, and I don't believe that Mr. Shorter is saying what was accurate with reference to what I did. I was in Atlanta, Senator.

The VICE CHAIRMAN. You think Mr. Shorter is wrong when he says that you wouldn't have been available as a witness?

Judge HASTINGS. I think that Mr. Shorter misrepresents at least if he says that I wouldn't have been a witness, it would have been his choice. I offered myself, as I have said to the Senator.

The VICE CHAIRMAN. Judge Hastings, back for just one more moment to the taped telephone call on October 5th—and we've discussed quite a bit of this. It's been discussed a lot in a lot of contexts.

But you were writing these letters and you wanted some more information and it's after 5:00 o'clock, and you ask Mr. Borders, "Did you hear from him after we talked?" Mr. Borders says, "Yeah." But you don't ask him what Mr. Pride said. And Mr. Borders says, "I talked to him and he wrote some things down for me." But you don't ask him what things he wrote down. And then Mr. Borders says, "And then I was suppose to go back and get some more things." But you don't ask him about the things.

You're calling Mr. Borders. You're writing these letters. You're making these questions. If they are sincere questions about Mr. Pride so that you can proceed to try to get some help for him, why don't you ask him what did he hear about after they talked, what things were written, more things, what things? I know I'm asking you three questions in one, but I want to boil it down.

Judge HASTINGS. I understand.

I can answer them all in one, Senator.

The VICE CHAIRMAN. All right.

Judge HASTINGS. And my answer to you is that Bill Borders and I were talking about a subject that was a common subject during that period of time between he and myself, and I think I understood him, and I thought he understood me.

The VICE CHAIRMAN. Well, that only leaves me not understanding.

Judge HASTINGS. And that is very important, Senator.

The VICE CHAIRMAN. You called—just take one of them, ALH, "The only thing I was concerned was did you hear it, you hear from him after we talked?" Mr. Borders, "Yeah," but you don't ask him what did you hear after we talked.

Judge HASTINGS. Senator, the conversation has been gone over. It has to stand face value, and I stand by my testimony.

The VICE CHAIRMAN. Last question.

In summary—the two most popular words in any speech—you said, if Mr. Borders had testified against you, you'd, "unload on his butt."

Judge HASTINGS. I meant that then; I mean it now.

The VICE CHAIRMAN. What would you have said? What would you have done? Mr. Borders' credibility is very important in this case. If you have something to unload on his butt about, I'd like to hear it.

Judge HASTINGS. The things that I would come by are things in the routine investigation that we have had. I'd try to learn more about Dredge. I'd try to learn more about what he and Nesline did. I'd try to learn more about what he and Santos Trafficante did. I would query him very actively about other judges, and particularly the fact that he may have said something to Dredge about having that kind of contact. I would ask him about what I believe the FBI investigated here in Washington, DC, as an attempt to do virtually the same thing with reference to this matter, and anything else that I could prepare for or that Professor Anderson or Patricia Williams or Robert Catz or any of the other attorneys would think that we could unload on him.

That's what I would try to do, Senator.

The VICE CHAIRMAN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there any additional questions by members? Senator Leahy?

Senator LEAHY. Mr. Chairman, I have probably got, as everybody does, hundreds of different questions, but I suppose we are very close coming to that point that even *quasi jurors* do where, in my case, it's probably time to fish or cut bait, and I won't ask any other questions because we would just be going on some of the same things from different directions.

The Judge has testified, others have testified. It's up to us to weigh the testimony and seek answers to any questions we have from the testimony, and Mr. Chairman, that's what I am going to do.

The CHAIRMAN. Are there other questions by any committee member?

[No response.]

The CHAIRMAN. Now, Judge, we very much appreciate your willingness to testify and particularly for such a long period.

Judge HASTINGS. Mr. Chairman, just one thing.

I thank you especially and Vice Chairman Specter and each Senator for all of your courtesy. I really do appreciate it.

Earlier on one of the Senators asked me about the process. I have immense respect for the process, and I would—and I don't mean it facetiously—urge upon you that what we have had, regardless of outcome, is a very good impeachment inquiry.

The CHAIRMAN. Thank you, Judge.

Judge HASTINGS. Thank you, sir.

The CHAIRMAN. You're excused, of course, as a witness.

Let me ask at this time, just to be certain about it. It's my understanding that the House managers do not have additional witnesses that they wish to call for rebuttal, and Respondent has no additional witnesses that he wishes to call; is that correct?

Mr. ANDERSON. No, Mr. Chairman. We do have some more exhibits that we would like to put in, and if now is a convenient time, we can try and do that.

The CHAIRMAN. Let me first just get a clear statement on the question of additional witnesses.

Is there any desire to call additional witnesses?

Mr. BRYANT. We have no additional witnesses. We do have a couple of documents.

The CHAIRMAN. All right. And Respondent has a couple of documents or several documents.

Why don't we take the House managers' documents first? Whatever you would like to offer, why don't you do that at this time, and then we'll do the Respondent's?

Mr. BRYANT. Mr. Chairman, we have three documents here. These are in response to some colloquy that I believe I had with Senator Rudman about newspaper articles which I said that we would try to find additional articles between I think January and July 23rd was the operative date, 1985 concerning Mayor Clark, and we've asked that a search be done. We do have several of these.

I just want to make clear that we are not offering these as proof that this is what Mr. Whittle may have looked at or may have read or may not have read. We don't know. I am simply trying to respond to Senator Rudman's query whether such articles exist. These are the ones that have been supplied to us and would be House Exhibits 231, 232, and 233. Exhibit 231 is dated July 18, 1985, 232 is dated June 22, 1985, 233 is dated July 8, 1985.

The CHAIRMAN. Mr. Anderson, did you have objection to those documents going into the record?

Mr. ANDERSON. I haven't seen them yet, Mr. Chairman. When I do, I will——

The CHAIRMAN. Could you look at them briefly?

I gather they are newspaper articles which are not being offered for the truth of what's in them, but to satisfy the question that was asked about whether there was some public statement at that time.

Mr. ANDERSON. I will look at them. I can't do it committee.

The CHAIRMAN. All right. If you would like an opportunity to look at them, we will give you that opportunity before we rule on that offer of evidence.

Are there other documents?

Mr. BARON. Not documents exactly. But earlier today Mr. Anderson raised the question whether the House would produce evidence which would underlie certain questions that I put to Judge Hastings on cross-examination. He raised two issues in particular, and I think we can agree that I did supply such material to Professor Anderson.

The CHAIRMAN. The record will so reflect.

Mr. Anderson, what items did you have?

Mr. ANDERSON. Well, Mr. Chairman, first of all, we have been supplied and would ask that it be admitted—we've given it a number, but the House could—what is a tape, an original tape of the conversation that Mr. Pride recorded between Judge Hastings. We would ask that the tape itself and the related transcript be made part of the record. We have marked the tape Respondent's 166. The transcript is in your volumes as House Exhibit 128. We think those should be a part of the record.

The CHAIRMAN. Is there any objection to those being admitted?

Mr. BARON. No objection.

The CHAIRMAN. They will be admitted.

[The document referred to was marked Respondent's Exhibit 166 and was received in evidence.]

Mr. ANDERSON. Mr. Chairman, we yesterday talked about the proceedings some matters identified, and we deferred till I had given the House a chance to look at them. They are transcripts of proceedings in *United States* v. *Borders and Hastings,* originally, and later *Hastings.*

First were the proceedings on February 17, 1982. In the course of those colloquies, the disagreements between Mr. Mavrides and Mr. Hirschhorn are commented upon in the record, and that is the time February 17th when Judge Gignoux announces that he intends to stay the proceedings until the appellate process is exhausted. It bears both on the point on the question of discovery delay, why Mr. Hirschhorn may or may not have left and what the respective parties were. That was Respondent's 157.

Respondent's 164 was a transcript of the proceeding on March 2nd where the stay was formalized, and where Mr. Hirschhorn in fact made, and his motion to withdraw was granted.

Respondent's—which I gave to the House—165 is the closing arguments and rebuttal which, in our view, bear upon the extent to which many of the arguments and questions that were asked here of Judge Hastings were in fact presented to the jury.

Those, it seems to me, should be a part of the record, and we would ask that they be put in. There is one——

The CHAIRMAN. Those are Respondent's Exhibits 157, 164, and 165; is that correct?

Mr. ANDERSON. Yes, Mr. Chairman.

The CHAIRMAN. Is there objection to those?

Mr. BARON. There is objection to one of them.

Is 165 the final arguments?

Mr. ANDERSON. Yes.

Mr. BARON. We would object to that, and I would like to be heard very briefly on that subject.

The CHAIRMAN. Why don't you go ahead and state your objection?

Mr. BARON. First of all, they are not evidence. They are arguments of counsel. These are not facts. These are simply the arguments that were put to the jury. It seems to us they are not relevant to any issue before this tribunal before the Senate and could only, frankly, we perceive it as sort of a back door way to reopen or revisit the issue of whether this constitutes double jeopardy of these issues already been decided, and in our view, that's objectionable.

Mr. ANDERSON. May I respond?

The CHAIRMAN. Yes, you may.

Mr. ANDERSON. Mr. Chairman, I have persisted, I think, from the outset in believing that the entire record of *United States* v. *Hastings* should be bound as a separate part of this record. Some of it has come in through prior testimony as proof of the matters asserted, but others have come in simply exactly for the reason and relevance that Mr. Baron objects to it.

I believe it is a matter committed to the conscience of every Senator to what extent were the kinds of questions that were being asked of Judge Hastings here posed on the same evidence to a jury of 12 who sat there. I accept that the Senate has decided that it is not as a matter of law foreclosed by a prior verdict. But you have received what I think is now acknowledged to be a circumstantial evidence where data is being marshaled to the extent those issues were fully and fairly tried to a jury of 12 American Citizens five years ago when the evidence was fresher, with a Government that had adequate resources and adequate talent to present its case, I think an individual Senator is entitled to say, this remains a mystery to me, I think a Senator is entitled to say, that we cannot find the truth, we cannot seek certainty, but we ought to respect finality.

I think for comparative purposes, every Senator is entitled to consider, perhaps I wish to come forward and vote on the date present simply because I am unwilling to undertake to redo a Constitutional task that was well done by a group of jurors.

I do not claim that that will be persuasive with any particular Senator. I do think it is a fact they're entitled to insist upon. Now, I put in these closing arguments.

I have one additional proffer. I could settle for getting that much in the record. Although I would prefer, as I originally suggested, the whole thing soup to nuts be there, because you are, in fact, and we can go legal nuances, in fact you are impeaching in some degree a jury's verdict. And I think a Senator is entitled to say, do we really want to get in this business. And I think it belongs in this record.

The CHAIRMAN. Mr. Anderson, what is your final—you had one additional proffer to make at this point?

Mr. ANDERSON. Well, I have a couple that bears on *United States* v. *Hastings*. There is one piece of transcript, and I can't find right now the exhibit number, it's on my table somewhere. It relates to the testimony that was proffered but not admitted at the trial of Norma Stallworth.

I offer it solely to establish the final predicate, most of it we have in, that Judge Gignoux in fact ruled that evidence concerning Mr. Borders scamming would not be admitted unless you had direct and competent evidence that Borders had in fact engaged in scamming. It goes to the point of whether material information was withheld from Judge Hastings regarding Mr. Dredge. It's very narrow. It is Respondent's 167.

The CHAIRMAN. Let me do this.

We will withhold a ruling on these three exhibits and the others that you would like to have until we return at 7:00, and we will return at 7:00 in order to finish up these procedural matters and hear what summary arguments both counsel wish to have, and then we will complete the proceeding.

Mr. ANDERSON. Two additional points, if I might, Mr. Chairman.

We have now authenticated, and the House has agreed, that Mr. Borders' telephone message logs are authentic documents and Judge Hastings' courtroom diaries.

I would move the admission of those documents, but on the understanding that I will winnow with House counsel so you don't

have to repeat the whole thing. When we are placing telephone calls in context, it seems to me that to isolate the page in which Judge Hastings' message appears without putting in the related pages, it may suggest that these calls were related to something other. So I would move the admission of those with the understanding that I will try to work with the staff of the House to keep the reproduction——

The CHAIRMAN. Again, just because of our commitment to various Senators that we will recess here at 5:30, I would like to do that at this point, and we'll return at 7:00 and complete any of these procedural matters.

Yes, Senator Rudman.

Senator RUDMAN. I inquire of the chair.

Does the Chair intend to set a time limit on final argument here today?

The CHAIRMAN. We had earlier indicated we would hear up to 45 minutes of argument from each side. We would certainly urge a shorter period if either counsel can find their way clear to accomplish that.

Senator RUDMAN. I just want to go on record, since we're keeping a historical record, that I oppose any final argument, whatsoever. I think it is totally useless before this body because we don't make a decision. We are not the finders of the final outcome. We are only the finders of fact, and the arguments that will be brilliant, I am sure, will be presented on the floor of the United States Senate sometime this October, that is the proper forum.

And I just have to say if the Chair wishes to allow final arguments, that the Chair has that right, and I certainly don't think it's the wrong decision. I just don't agree that there ought to be final arguments before this group.

The CHAIRMAN. Let me just say, since the issue was raised by Senator Rudman, that the request has been made that counsel be allowed to summarize what has been presented to the committee.

We need to make it very clear that the summation would not take the place of a summation that each party would expect to give before the full Senate when the matter is taken up later in the year.

The summation at this time is simply to help members of the committee in their understanding of the matters that should be addressed in the summary of the evidence which will be reported to the Senate. So we will reconvene at 7:00.

Yes.

Mr. BRYANT. I would just like to make the point that we are willing to waive the arguments if that's the decision. I understand it's not the decision of the Chair and therefore we'll make the argument.

The CHAIRMAN. As I understand it, Respondent's counsel would like to make a summary statement to the committee, and on that basis we will reconvene at 7:00 o'clock to hear that summary statement and to hear the statement from the House.

[Whereupon, at 5:35 p.m., the committee was in recess to reconvene at 7:00 p.m., the same day.]

EVENING SESSION

The CHAIRMAN. The committee will come to order.

We were delaying starting because we had been informed there was a vote on the Senate floor at 7:20. We have now been told that that has been delayed, so we'll go ahead.

Let me just conclude a few procedural matters before we go into any kind of argument.

House Exhibits 231, 232, and 233 were offered before, and Mr. Anderson asked for time to review those to see if he would pose an objection to them. He's reviewed them. It's my understanding he has no objection; is that correct?

Mr. ANDERSON. That's correct, Mr. Chairman.

The CHAIRMAN. On that basis, they will be admitted.

[The documents referred to were marked House Exhibit Nos. 231, 232, and 233 and were received in evidence.]

The CHAIRMAN. Respondent's Exhibits 157 and 164 and 167 have been offered, and it's my understanding that the House has no objection to those exhibits being admitted; is that correct?

Mr. BARON. With one modification, Mr. Chairman. 167, by agreement, was reduced in scope from what was originally proffered, and with that modification, there is no objection.

The CHAIRMAN. All right. Those will be admitted as well.

[The documents referred to were marked as Respondent's Exhibit Nos. 157, 164, and 167 and were received in evidence.]

The CHAIRMAN. Respondent's Exhibit 165, which is a statement of the closing argument from the criminal trial, there is objection to that. It's been stated by House counsel and argued.

Did you wish to make additional argument on the record?

Mr. BARON. If I may.

I simply want to make the observation that what is being offered as evidence in this case could not have been proffered as evidence in the very case in which it occurred. The arguments of counsel are not evidence. I think the only thing it could prove, perhaps, is which counsel was more eloquent than the other or which has a better command of grammar. It has no probative value, whatsoever, on any issue that is legitimately before you in connection with these articles, and in our view it simply should not be admitted for any purpose.

The CHAIRMAN. Mr. Anderson, did you wish to respond?

Mr. ANDERSON. May I respond, Mr. Chairman?

It is central to the point for those Senators who deem it relevant what arguments were made and considered by the jury. We don't offer it to prove the truth of the matter, but to the extent the same kinds of hard questions the Senators were asking Judge Hastings here that they may ask themselves of the evidence. It bears on the point to what extent are we now trying to decide in 1989 issues that were fairly confronted.

I think it goes really to the heart, and I recognize that the Senate has ruled as a matter of rule there is no bar established by the verdict. But I think every Senator is entitled to ask to what extent is this a rehash, and individually to ask, am I so satisfied that I will now stand and say I think the jury was wrong, or that there is something so new that it moves me.

You'll recall throughout I thought the entire record should be an exhibit. We have now got it down to the point where I think at least the essential parts would be before the Senate, but I do deem this an essential part.

The CHAIRMAN. The committee will admit Exhibit Number 165 for the limited purpose that it's offered.

[The document referred to was marked as Respondent's Exhibit No. 165 and was received in evidence.]

Respondent has earlier requested that the entire trial transcript from the criminal trial be an exhibit to the proceedings. The committee remains convinced that the inclusion of that voluminous material as part of the evidentiary record will cause undue confusion about the state of the evidentiary record. We do, however, understand the Respondent's interest in having that record available to the Senate, and we accordingly rule that while a full transcript will not be included as evidence in the proceedings, copies will be made available to all Senators who wish to review it.

Parties may make use of that transcript in argument before the Senate, and may refer to it and its contents as they deem appropriate in their briefs.

We have two other matters, and let me just state my understanding on those. There is a proposed exhibit that the Respondent would like to have made part of the record consisting of phone messages received at William Borders' office. Yes, Mr. Anderson?

Mr. ANDERSON. Two, extracts from the phone message books and from the courtroom diaries on relevant dates.

The CHAIRMAN. OK. Now, in both of those cases, we've discussed that with counsel for the House. It's my understanding there is no disagreement in principle with that. It's a question of how extensive those documents are. And counsel for the House and counsel for the Respondent have agreed that between now and the close of business Monday they will get together and try to come to agreement on what would be included from those two sources.

If they can agree, then we would plan to admit those as well. We do admit those conditioned on agreement being reached. If agreement is not reached, then, of course, we would not admit what is proffered.

The final item that I am aware of is on redaction of affidavits.

Mr. Gekas, you wish to make an argument on that and make a motion, and we will hear that at this point.

Mr. GEKAS. Mr. Chairman and members of the committee, I would like to file a written motion that asks for redaction on certain areas of these proceedings, the ultimate purpose of which would be if our motion would be granted that we would have two sets of printed volumes having to do with the wiretap situation, the Title III Section of this case, namely an unredacted set of printings for the members of the Senate, and a redacted set for the printing of the general public volumes.

That's a tall order, we know it, but the printed motion that we want to proffer contains the historical concepts of the case up to now, which justify it in our judgment. So we would like to offer this as a written motion, and we would like it for the purposes that we have outlined, to appear in the daily transcripts as a fully documented motion.

The CHAIRMAN. It will be included as such.

Mr. GEKAS (by written submission).

Mr. Chairman, before the managers called their first witness on the allegations in Article XVI, dealing with Judge Hastings' unauthorized disclosure of information obtained from a Title III wiretap, we formally alerted this committee to precautions the House had taken in its proceedings to protect individual privacy. We pointed out that we tried to avoid unnecessary disclosures in open sessions of the identities of individuals who were not central to an understanding of this matter, and we redacted materials included in the appendix volume on electronic surveillance prior to publication.

We are pleased to note, as these proceedings draw to a close, that the principle of trying to respect individual privacy has been honored in the questioning of witnesses. We are left, however, with the issue of how to avoid unnecessarily compromising individual privacy in the publication of Title III related exhibits.

In connection with that matter, we accordingly move that the committee issue a limited printing of the unredacted Title III related exhibits for the exclusive use of the Members of the Senate—followed by a later printing of these exhibits in redacted form for general distribution. Such a procedure would ensure that the trier of fact would have complete access to the exhibits, as the members of this Committee have had, and would remove the redaction issue from any adversary context. It should be noted, in this connection, that no individual involved in litigation, civil or criminal, has a right to publication, at government expense with nationwide distribution, of exhibits introduced at trial. Under our proposal, respondent will remain free to make such use as he considers appropriate of his copy of the unredacted exhibits, although hopefully he will act responsibly in connection with any possible dissemination of Title III related information.

The managers believe that the Senate should make its own judgment on specific redactions prior to publication just as the House made its own judgment on this matter. The House's judgment was expressed in the redactions made in Appendix IV to the hearings of the Subcommittee on Criminal Justice. The committee may wish to examine the redacted, printed version of various exhibits in deciding whether to make similar redactions prior to its publication.

In the event the committee rejects our suggestion for a limited duplication of unredacted Title III exhibits for the use of Senators and decides against making its own redactions prior to publication, the managers request a reasonable period of time after the conclusion of these hearings to submit redacted versions of exhibits to be substituted for unredacted Title III exhibits. The managers will utilize the redactions incorporated in Appendix IV for guidance but will seek to eliminate those deletions that have been superseded by testimony presented during these hearings. We point out to the committee, in this connection, that informal discussions between counsels on both sides indicate wide disagreement on the redaction issue. Suffice it to say the managers' position is that the surreptitious recording of conversations is a necessary tool of law enforcement under appropriate safeguards, but every effort should be made to protect individual privacy, prior to publication, consistent

with the needs of the parties to have the full Senate consider specific information.

The CHAIRMAN. Mr. Anderson, did you wish to speak briefly on this?

Mr. ANDERSON. We will not file a written response, but my remarks address it.

The committee has received in evidence a variety of Title III documents. The release of those documents has been reviewed and monitored by the courts. I understand the FBI has, whatever security interests, they have asserted them, they are frankly in evidence.

What we are talking now is not about redaction, we're talking about withdrawal from evidence. I leave to the Chair the ability to print two sets of the records. I don't think that's practical. But apart from that, these documents have been available to the media, they have been available to the floor, they're there.

I think Respondent's counsel and Respondent have demonstrated that where, as in the case of Mr. Harmon or Agent Shull, or something, there is a specific particularized interest that wants protection that we're flexible, and we are on that.

Generalized redactions tend to reduce documents to illegibility, and in my view that would be the case here. I would think, although I recognize these are not formal court proceedings, the principles that govern common law access and First Amendment access of the media to public records should apply here. This is a public trial. These documents are in evidence. We're more than willing to talk about particularized needs. Generalized interests and sensitivity to privacy concerns, there is not a trial that takes place in America, that I'm aware of, where names are not mentioned of people who may be strangers to the proceedings would be a lot happier if it didn't happen.

The nature of justice in this country is that we have an open Government where those names are mentioned. And it's one of the prices we all pay for democracy. That there may be some price to some people that some generalized interest would protect, that just isn't America. These are in evidence. They're documents. They should not be redacted.

The CHAIRMAN. Let me give the ruling of the committee on this issue and explain it.

When the parties or witnesses have identified in advance testimony or documents that should not be made public, the committee has acted to protect particularized interests in confidentiality. The wiretap exhibits in question were offered by the House and admitted into evidence without a request that any limitation be placed on them. Consequently, they have been available to the public for several weeks.

The evidence submitted here will be printed when it is reported to the Senate, and the official distribution of the printed documents outside of the Senate will be governed by the provisions of Title 44 of the U.S. Code. It would be difficult and probably unrealistic to print two records of exhibits, one for distribution within the Senate, and one for distribution outside of it, and on that basis, the committee will deny the motion of the House which is presented at this time.

Let me elaborate a little and urge that the House identify those items in those Title III documents which they believe should be redacted and again get with counsel for Respondent and see if agreement cannot be reached to make that redaction, and we will certainly entertain any redaction that can be accomplished on that basis.

Mr. GEKAS. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. GEKAS. We will instruct our staff to get together with the staff of the Respondent for that purpose.

The CHAIRMAN. We would be pleased if you'd do that, because we are sensitive to the concern that you are expressing.

Let me also say that by the close of business Monday we will enter a redacted version of the testimony of James Harmon, which was taken here before the committee.

I think that's all the procedural matters we have, and we can, when we return from this vote, go ahead and have our closing or summary arguments.

We'll stand in recess for ten minutes.

[Recess.]

The CHAIRMAN. At this time we're meeting to hear the summary arguments by the House managers and by counsel for Respondent. The House managers can go first.

Representative Bryant?

SUMMATION ON BEHALF OF THE HOUSE MANAGERS

Mr. BRYANT. Thank you, Mr. Chairman.

I'd first like to say a very sincere thank you on behalf of the House managers for the attention of the members of the Senate throughout this proceeding. We thought our biggest problem in the beginning would be to maintain the attention of the most busy people in the Government, and we have not had any problem with that, and we are very grateful to you for having sat through this for four weeks.

Second, I'd like to, if you would permit me, to thank the staff of the House Impeachment Committee. This will be the only time I'll have which is even close to being appropriate for expressing our thank you to our special counsel Alan Baron and Janice Cooper and Lori Fields for an excellent job they have done, and I would say that to the extent that the House managers have shown any sparkle in this presentation, it is due to their extraordinary efforts over the last two years.

I would like to begin: I would like to say that tonight I am not going to hit every single point in our case, but I do want to emphasize to you that there are six elements in considering the case against Judge Alcee Hastings with regard to his participation with William Borders in a bribery scheme and his false statements, six elements that we urge you to keep in mind.

The first is the repeated coincidence of documented contacts between William Borders and Judge Hastings at significant junctures of the *Romano* case pending in Judge Hastings' court; second, the detailed inside information about events in the *Romano* case which Borders conveyed first to Dredge and later to Rico; third, Judge

Hastings' appearance and conduct at the Fontainebleau Hotel on September 16th; fourth, the timing of the order for turning a substantial amount of the Romanos property that was issued on October 6th; fifth, peculiar coded conversation of October 5th between Judge Hastings and William Borders on the afternoon before the order was issued; and sixth, Judge Hastings conduct upon learning of William Borders' arrest in Washington, DC.

Let me briefly summarize the first of the facts which I have referred to, the repeated contacts between William Borders and Judge Hastings at the time of key events in the *Romano* case. The first of these documented contacts was early on the morning of February 20th, the final day of the forfeiture hearing in *Romano*, when Judge Hastings called William Borders at 7:30 a.m.

The House submits that the next documented telephone contact between Judge Hastings and William Borders was at 12:15 on April 9th after Judge Hastings had left a message for Borders to call him between 12:00 and 1:00. That call placed from the pay phone outside of Judge Hastings' chambers to a pay phone at the Federal courthouse in Washington, DC was made during the same week, if you recall, that Brother Moscato told the Romanos that there was a Washington lawyer who could help them with their case.

Again in late April, three calls were placed by Judge Hastings to Borders within eight days of the day Jeffrey Miller advised the parties of the *Romano* sentencing date. Again on May 4th, the day of the order forfeiting the Romanos' property, Judge Hastings called Borders at his office and left a message, "Urgent."

There were four brief calls from Judge Hastings to Borders between the May 4th forfeiture and the first scheduled sentencing on May 11th, the last of which was on the morning of May 11th at 6:27 a.m. Three calls were made from Judge Hastings to Borders just before and after the sentencing of the Romano brothers on July 8th.

And finally, there are the calls in September and October which coincide with the development of the bribery scheme after the undercover operation with Mr. Rico had begun.

We submit to you that the fact of so many contacts at such key times take place in this scenario cannot possibly be the result of mere coincidence.

The second element that I mentioned in my first list of six elements that I'm focusing on in this presentation is the fact that—and it's a fact that we ask you to consider—is the kind of information which Borders had about the *Romano* case. Where did he get it?

The House submits that the purpose of the telephone calls I just referred to was to discuss the *Romano* case and the soliciting of a bribe from the Romano brothers, and the detailed information that Borders had about the case bears out that contention.

First there's the question of how Borders even knew in March 1981 that the Romanos had a case pending before Judge Hastings at all. It's a good question to ask how did he even know about the case.

Second, and perhaps more significantly, is that on Sunday, May 10, 1981, Borders knew that the sentencing of the Romanos scheduled for the next day would be continued. Four months later when

Borders met with Mr. Rico, he revealed that he knew that the Romanos had been sentenced, he revealed that he knew that they had appealed their convictions, that they had lost some of their property as well, and he promised that an order would be issued returning a substantial portion of that property. He didn't promise that all of it would be returned. He promised that a substantial portion of it would be returned. Very accurate.

Finally, on October 5th Borders was able to tell Mr. Rico that the order would go out either that day or the next one, and the order which had been languishing for three months, was in fact issued the next day, October 6, 1981. Where did William Borders get this information?

The third factor that I mentioned to begin with was that Judge Hastings appeared at the Fontainebleau Hotel at precisely the time arranged in advance by his co-conspirator and the undercover agent, Paul Rico.

On September 12th, as the first show of proof that he controlled Judge Hastings, William Borders promised Mr. Rico that Judge Hastings would appear at the main dining room of the Fontainebleau at 8:00 p.m. on September 16th. He made this promise without consulting Judge Hastings first. We urge upon you that is a critical point to observe.

In spite of the fact that by every account, by his own account, Judge Hastings was a very very busy man. Indeed Judge Hastings testified that he had a meeting or two meetings every night.

In one of the phone calls to William Borders, when he reached him—I believe it was the October 8th phone call—said he was calling from Albany, Georgia, and he said, "(explicative deleted) you move around, man."

Everybody knew Judge Hastings moved around a lot, had a busy schedule. How could Borders make this promise without consulting Judge Hastings first? Despite his schedule, he appeared right on time on September 16th, just as Borders had promised. He made reservations for two at 8:00 p.m. He invited a date, Ms. Thompson, said nothing to her at any time about expecting anyone to join them. Even after he had told her he had been looking for friends from DC, he said nothing to her about expecting those friends to join them for dinner.

Seated at a table for four, he did not object when two of the place settings were removed. He did not have William Borders paged. Why? Because he did not expect William Borders.

Judge Hastings was at the Fontainebleau Hotel at precisely the prearranged time to show his participation in the bribery scheme.

Fourth, we urge you to consider carefully the timing of the October 6th forfeiture order and the sequence of events that immediately preceded the forfeiture order. On July 8th, from the bench, Judge Hastings had confirmed his earlier forfeiture order and promised a short written order. For three months that order was not prepared.

On Friday, October 2nd, Rico called Borders and complained the order that had been promised him returning the property had not been received, and Borders expressed the opinion that there might be a problem with the mails and asked Rico to call him back on Sunday. Borders rejected, if you recall, Rico's suggestion that he

call him back again that night because he wasn't sure that he would be able to be reached, as he put it, "anyone." And indeed, an hour later when a call was placed from Borders' office to Judge Hastings' chambers, Judge Hastings had already left for the day.

Sunday morning, Rico called, Borders still had no answer. He told Rico he had not been able to reach anyone, and asked Rico to call back on Monday afternoon. Later that day on Sunday afternoon, Borders once again tried to call Judge Hastings. This time he left a message with the Judge's mother for the Judge to call him. The very next morning Judge Hastings told his law clerk, Jeffrey Miller, "Get the order out today." And Monday afternoon, Borders finally had an answer for Rico, the one that Rico had been calling to get. It wasn't the mails that was the problem, he explained, the order simply hadn't been done. But it had been taken care of, and Borders assured Rico that the order would come out that day or the next morning.

Those are the events which immediately preceded the issuance of the order on October 6th, and the House submits there are a series of events which condemn the Judge to a conviction in this case.

The October 5th coded conversation, the House submits that that conversation of October 5th, if you will examine it—and it's before you here on my right and your left—simply makes no sense on its face. The disquieting points in this conversation do not only come from William Borders, if you will read it carefully.

The first place it's important to observe, this conversation has almost no greeting. Judge Hastings initiated the call, and according to Judge Hastings, this was the first time that he had spoken with William Borders in over two weeks. You recall that he testified that the call that Borders had made to him the previous day, he didn't return. But there's not anything in this conversation such as, how are you doing, what's happening, there's no opening banter.

I ask you to compare this with the recorded conversation, the other recorded conversations of these two men talking, which you've heard, compare it with the personality of Judge Hastings that you have seen revealed before you as he testified. That is not a characteristic conversation of Judge Hastings as one would begin with an old friend that he hasn't talked to for two weeks.

Secondly, his statements during the conversation simply are not logical. I would urge you to remember that he initiated the call, Judge Hastings did. He apparently wanted some information from William Borders. And what did he want to know? He asked Borders whether Borders had heard from "him" since they had talked. Borders says he had. And Judge Hastings responds as if the simple fact that he says, "yes, he had heard from him" had provided all the information which he needed. OK. All right.

Now, I ask you simply, does that response by Judge Hastings make any sense? Was he calling merely to find out if Borders had talked with "him," no matter who "him," is? Didn't he also need to know the content of the conversation with "him"? Of course he would have had to have wanted to know that if this conversation was a real conversation.

Examine, if you would, the nonsensical reports by Borders about "him" writing things down and going back to get more things,

statements which Judge Hastings repeatedly assured Borders he understood. How could he understand them? There's no way to understand them based on the wording that we see in this conversation between two people who have not talked for two weeks.

Despite the fact that Borders has told the Judge that he would be getting some more "things," now presumably things that he needed for the letters, Judge Hastings announces that he is going to mail the letters out, and then good-bye. No mention of the upcoming gala celebration in Washington, DC, which they were both going to attend, no mention of whether Judge Hastings will be able to finish his trial in time to attend the boat ride that's part of the gala. They haven't talked in two weeks. It's four days before the Judge is suppose to come to Washington, and there is no mention of the Judge's plans, not even a "See you on Friday."

I suggest to you that this is not a normal conversation. It was a coded conversation to exchange information about the bribery scheme.

Finally, members of this committee, the sixth fact, the Judge's conduct on the afternoon of October 9th. Congressman Gekas is going to discuss this topic in more detail, but it should suffice to say that every aspect of the Judge's conduct that afternoon indicated that he wanted to avoid speaking with the FBI until he had some time to think about what he would tell them. He assured himself at least an hour to do so by taking a one hour $50 cab ride to Baltimore-Washington Airport.

He said, "I wasn't going to Brazil." He didn't need to go to Brazil. What he needed was time to think, and he got it through his hasty departure from Washington via Baltimore-Washington Airport.

This is only some of the evidence, just six high points indicating Judge Hastings' direct involvement in the bribery conspiracy.

I think it's not only the affirmative evidence that establishes that he was a knowing and willing participant in the bribery scheme, it is also the lack of any credible defense that was presented by Judge Hastings' counsel.

What is the Judge's defense to the critical events in this case? How does he explain away the pattern of contacts that I've mentioned earlier, the Fontainebleau dinner, the timing of the order returning a substantial amount of the Romano property?

Well, his first method of explaining away contacts is to turn to the National Bar Association. In response to all of the documented telephone contacts between himself and William Borders that occur around the key events in the *Romano* case, Judge Hastings asserts in part by way of explanation that he was talking to William Borders because they were both active players in the National Bar Association.

But when you take a look at the record that was created by the testimony here, the evidence in support of this defense simply is not there. Judge Hastings did not offer any specific evidence as to why he would need to talk to William Borders about National Bar Association events, as pointed out by one of the respondent's witnesses in this case, Judge Latimer, the judicial counsel of the National Bar Association prides itself as being an autonomous section of the National Bar Association. There's no reason for a member of

the judicial counsel to have regular contact with the president of the NBA.

And more importantly, even if the Judge did talk to Mr. Borders about NBA meetings, this defense falls far short of explaining away all of the incriminating calls. The only NBA events that Judge Hastings has documented prior to October 9th are meetings in late February and in late July 1981.

I'll ask you to ask yourselves this question. What NBA event explains the April 9th message from Judge Hastings to William Borders stating that the Judge will be in his office between 12:00 and 1:00. That's the call that's followed by the 12:15 pay phone to pay phone call charged to Judge Hastings' residence? What NBA event explains away the undisputed fact that on May 4th, the very day he signed the original order forfeiting nearly $1.2 million of Romano property, Judge Hastings left a message for Borders marked, "Urgent." What NBA event explains why on May 11th, the same day the Romano sentencing is postponed, Judge Hastings made two calls at 6:27 and 6:28 in the morning, the second to the home of Madeline Petty in an undisputed admitted attempt to locate William Borders.

We suggest to you the NBA defense doesn't wash. But there's another one, and his other defense is Hemphill Pride. His second explanation for all the contacts between himself and William Borders that occur around the critical events of the *Romano* case is Hemphill Pride and the conversations with regard to trying to help Hemphill Pride.

We submit to you that it is this defense that is most crucial to his case. For Judge Hastings' and Borders' joint effort to help their friend is suppose to explain away all the telephone calls from March to September, a call between the two of them which, according to Judge Hastings' own testimony, occurred a day or two after the $25,000 down payment on the bribe, the telephone message the Judge received from Bill Borders the day before he tells Jeff Miller to do the *Romano* order today, and it's suppose to explain away the conversation between Judge Hastings and Borders on October 5th. In other words, it's suppose to convince you that he wasn't part of a bribery scheme.

We suggest to you that this defense is completely implausible just based upon careful examination. For example, according to Judge Hastings' testimony, from March to October, he and William Borders continually talked about Hemphill Pride and what they could do for him. According to the Judge, Borders pestered him to write letters of support for Pride continually, and according to the Judge, he didn't know that Hemphill Pride had to wait two years before applying for reinstatement.

But does Judge Hastings write the letters in June or in July or in August? Does he resolve the issue promptly so that his admitted best friend can be readmitted to the bar as quickly as possible? According to him, he doesn't. He waits until October 5th. How sensible is that?

Then having told William Borders at 5:12 in the afternoon on October 5th that the letters are written, and that they will be sent off to Columbia in the morning, he decides not to send the letters. Does he call Borders and tell him he's changed his mind? No not

on October 5th, not on October 6th, not on October 7th, nor does he mention his change of heart when talking to Borders on October 8th. And when he spends the entire morning with Borders in Washington, DC, on October 9th, Judge Hastings still doesn't correct Borders' misimpression about the letters, the letters that Borders has been pestering him about for months, the letters that address the very subject he and Borders say explain away all the conversations they've had for the last eight months.

I suggest to you that this is not the only problem that they have with their defense in which they draw in Hemphill Pride. There is also Hemphill Pride himself who testified right here, you heard him, you had the opportunity to assess his credibility. He testified unequivocally that he never knew about any letters of support, that he did not want any letters, and that Judge Hastings even told him that he didn't need to know about such letters. That's a curious thing to observe, and I want to emphasize it.

For the very reason that Judge Hastings told him that he didn't need to know about the letters, Judge Hastings' explanation for failing to tell William Borders of his change of heart about sending the letters doesn't make any sense. Remember what he said? He said, "I wanted to wait until I could talk to Borders and Pride at the same time."

But if Pride didn't know about the letters because he didn't need to know about the letters, according to the Judge, he wouldn't need to wait until Borders and Pride were together to tell him that he decided not to write the letters which on October 5th he said he was going to write.

Two final points undermine the Hemphill Pride defense as well. First, the very people that you would think Judge Hastings would have contacted in his effort to help Mr. Pride, such as Judge Latimer, Judge Perry, Judge Rogers, Andrew Chisholm, all of whom testified before you as witnesses for Judge Hastings, were not contacted. These were the guys that knew Hastings and they knew Pride. The fact of the matter is, no one was contacted by the Judge or Bill Borders. After all that talk about wanting to help Hemphill Pride, nobody was ever contacted.

I would reemphasize one last thing with regard to this point. It was two more years before Hemphill Pride could apply for reinstatement to the bar. Is it credible for Judge Hastings to tell us that after all of the talking that he had done with Pride and Borders, and presumably others, about this matter, all the hand holding and the counseling of a friend that he had done, that he didn't know that it was two more years before letters like this could possibly have any impact on an effort to become reinstated to the bar? It is not plausible.

There is, of course, all of the evidence indicating that the actual letters themselves that he produced at the last minute, House Exhibit 154, were in fact physically fabricated.The letters are pristine, as was originally observed by Senator Specter. No mistakes, no mark outs. They were not typed, as was Judge Hastings normal practice as he left the bench. They were kept for three months, from October 1981 until January 1982, even though during that period of time there was no indication to him of their potential evi-

dentiary significance. He didn't know yet the role they were going to play in his case.

But he kept them around for three months. They were kept around through the discovery process, until less than two months before the criminal trial, and that he stipulated that Judge Hastings did not even show them to his lead counsel, Mr. Hirschhorn at the time he learned that the letters for Hemp would be key to his case.

The question is why did he not show them to his attorney, why were they not produced until the eve of trial, and the answer is those letters did not exist. They were created by Judge Hastings to manipulate the criminal justice process and try to achieve an acquittal, where his friend Mr. Borders had failed and was found guilty.

If there were no letters for Hemp, what then is the true meaning of this conversation over here to my right, the October 5th conversation between Judge Hastings and Williams Borders? We contend, of course, that the conversation is in code. I think that if you look at it and see, as we see it, when Judge Hastings states that he has "drafted all those ah, ah, letters, ah, for Hemp," he's talking about the *Romano* forfeiture order.

When Borders states, "See, I had, I talked to him and he, he wrote some things down for me," he's referring to his meeting with Mr. Rico, where he received the $25,000 downpayment.

When Borders goes on to state, "And then I was supposed to go back and get some more things," Borders is saying that he needs to meet again with Mr. Rico to collect the remainder of the $150,000 bribe.

And finally, when Judge Hastings states, "I'll send the stuff off to Columbia in the morning," he's not talking about letters for Hemp, he's telling William Borders that the *Romano* order will go out the next day. Of course, that's exactly what happened.

Now, the Respondent will argue, I presume, as part of his defense this question: Why would Judge Hastings need, through this conversation, to ask William Borders about the bribery plan, call him on the phone and ask him about the bribery plan, after he had already told Jeff Miller that day, that morning to get the order out today?

According to the respondent, this conversation can't be a code because the timing is off, the Judge had already told the clerk to get the order out that morning. The answer to that question is this: In the coded conversation, Judge Hastings is reconfirming that the deal is still on. He knew from Borders that he needed to get the *Romano* out. What he wanted to ascertain for certain, before actually sending out the order, was whether the deal was still on, even though the order was going out late. Recall that the order was supposed to have been issued a few days before, according to the scheme between Rico and Borders.

Look again at the conversation: Judge Hastings tells William Borders, "The only thing I was concerned with was did you hear if, ah, you hear from him after we talked?" And Borders says, "Yea." Judge Hastings responds, "Oh, OK." Mr. Borders says, "Uh huh." And the Judge says "Alright, then." Borders then explains the downpayment and how he must go back to collect the balance due.

Then Judge Hastings says, "Alright, I understand. Well then, there's no great big problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning."

I ask you, what was the great big problem? We submit to you that the great big problem was that the order was going out late and there was a question in his mind as to whether the scheme was still afoot. Having been assured that it was, Judge Hastings, as he learned in the October 5th conversation, that it was, that the bribery deal went forth, and in fact the order went out on October 6th, and that is the meaning of the October 5th conversation, a reconfirmation of a deal, the schedule of which had gotten off a few days.

Now, turning away from the Hemp defense and the coded conversation, what is Judge Hastings' explanation for the curious timing of the order returning a substantial amount of the Romanos' property? The Judge contends that he told Jeff Miller on October 5th to finish the order today because Mr. Miller was scheduled to leave at the end of the month and Judge Hastings' travel schedule would keep him out of the office the remainder of Mr. Miller's tenure.

I submit to you, if you examine it carefully, this defense doesn't fly either. Not only do the series of phone calls between Mr. Rico and Mr. Borders, which are twice followed by calls from Borders to the Judge, undermine what I will refer to as the Jeffrey Miller defense, there is also the testimony of Marilyn Carter, Judge Hastings' own deputy clerk. She acknowledged in her testimony that, on October 6th, everyone was rushing to get the order done, that Judge Hastings said, "Sorry for the rush, this order must go out today," and other work was to be dropped and all of these factors played a part in her decision to send the *Romano* order out, not through regular mail, but to send it out special delivery.

I point out to you that the fact that Jeff Miller was leaving at the end of October does not explain why the order had to go out that day. It may explain, arguably, why the order had to be completed, but not why it had to go out that day. It does not explain why, after Mr. Miller had finished the order, there continued to be pressure on the staff to get the order out, and the Jeffrey Miller defense does not explain why the Romano forfeiture order was absolutely consistent with the promise made by William Borders to Mr. Rico, that a substantial amount of property would be returned.

Finally, there's the defense involving William Dredge. Judge Hastings, through his counsel and testifying personally, contended very vigorously that one of the reasons you should not believe that he is part of any conspiracy is because William Dredge can't be believed.

What I want to emphasize in these comments this evening is that the critical part of William Dredge's testimony is completely corroborated. He is the person through which the Government learned of the bribery scheme. He first revealed a scheme involving Santos Trafficante and gave details about Williams Borders 'conduct that twice were confirmed.

William Borders did come down to Miami, he met under very suspicious circumstances both times with Trafficante. Following

that, Dredge told the Government about Mr. Borders' pursuit of the Romanos. Dredge said that Borders was willing to meet directly with one of the brothers and that, as a show of proof, he would have Judge Hastings appear at a particular location at a particular time, and this too proved correct.

With respect to what Dredge said about earlier contacts he had with Borders and the *Romano* case, they too are confirmed. We know that Neal Sonnett received a call from the Romanos in early April, in which he learned that the Romanos had been contacted about a DC lawyer who could help them with their case, we know that May 11th the *Romano* hearing did get continued, and we know that when Judge Hastings got on the bench—remember this, Senator Lieberman brought it out—he went right to the sentencing, without even addressing the pending motions that could have rendered the sentencing moot.

Contrary to Judge Hastings' testimony, we do know that Dredge could have spoken to William Borders on May 10th, because Dredge was not arrested until early in the afternoon of that day. In short, his attack on Dredge does not indicate in any way his innocence.

I would like to turn briefly to his explanation of his appearance at the Fontainebleau Hotel on September 16th. He says that he dined at the Fontainebleau because Borders says that he would be in Miami, he asked the Judge to meet him there. After all, the Judge said he had a judges meeting, he would probably eat out that night anyway, so he might as well have dinner with his good friend Bill Borders, if he was going to be in town.

Let's examine it a little more closely. First of all, the question is did Judge Hastings act as if he were really expecting to meet Borders that evening. He made a reservation for two, he made no mention of meeting Borders, he made no attempt to find Borders by checking other restaurants or having him paged, and, in spite of his alleged statement to the maitre d' that he was expecting someone, the hotel staff still cleared away the two extra place settings, without any objection.

I think more importantly at this stage, we ought to look at the chances that Bill Borders would have been taking if indeed he was playing a trick, if he was scamming the Judge, as the Judge would have you believe.

As I pointed out earlier, Borders guaranteed a day and a time for the Judge's appearance, without checking with the Judge first, a risky promise, given the Judge's busy schedule. And beyond that, there was the distinct possibility that, even if the Judge had initially had agreed to meet him for dinner, the Judge might later find out that Borders was not going to be in Miami because that night he was supposed to be at the fights and, as a result, the Judge would have changed his dinner plans.

The plans of Borders to be at the fight were not secret. Hemphill Pride, Judge Hastings' best friend, knew Borders was going, that was his testimony. You heard Cindy Rogers, the receptionist, testify that Borders did not ask her to keep that a secret. What if the Judge had called Borders' office and found out that Borders was in Las Vegas, as he certainly would have? We would submit to you

that Judge Hastings' explanation of his appearance at the Fontainebleau simply does not make sense.

Finally, what is his defense to his flight from Washington, DC on October 9th? Examine the record of his criminal trial. At that point in his dilemma, the Judge unequivocally and forcefully asserted that he left Washington, DC minutes after he learned of Borders' arrest because he made two telephone calls from his room at the L'Enfant Plaza Hotel. One of those calls was to his mother and one he said was to Patricia Williams. And he said that he learned from his mother that she was hysterical and she wanted him to come home, and he learned from Patricia Williams that she had already been interviewed and that his staff was being interviewed.

That is his explanation for why he left for Florida, without checking out, without picking up his suit. When asked by his counsel here right in front of you whether he stood by his trial testimony, Judge Hastings said that absolutely he did, but his telephone defense as to why he left town so quickly simply pales in the face of the evidence.

There is absolutely no telephone record of such calls. His contention that the HOBIS system at the hotel was down that day has been contradicted by the testimony of our witnesses. The documentary evidence itself establishes that every long-distance call is sequentially numbered and none is missing for the time period when even Judge Hastings agrees the calls had to be made.

The point about whether the calls were listed or not on Judge Hastings' room bill is irrelevant, because there would still be, regardless of whether it was assigned to the room bill, there would, according to the expert testimony, there would still be a record of the call having been made from the hotel. The fact is that no such call was made.

It is interesting to observe as well that Judge Hastings didn't even mention these calls to the FBI agent who interviewed him on the night of October 9th. Was he asked why he left for Florida in such a hurry? Yes, he was and his answer to the FBI agent simply was that he talked to Hemphill Pride and decided that he wanted to get back down on his own turf. He didn't mention those calls which, according to the trial testimony, was the primary reason why he left for Miami.

Of course, with regard to this matter, there is Hemphill Pride who testified that Judge Hastings did not make any calls after he told the Judge he knew of Mr. Borders' arrest. Mr. Pride was with Judge Hastings from the time the Judge learned about the arrest until the time when Judge Hastings was heading out the door to catch a taxi.

Indeed, as he testified, there was no circumstance under which Judge Hastings could have made any calls outside his presence. The point I am trying to drive home is that there were no calls. His defense as to why he fled from Washington, DC is, in short, without credibility.

I would raise another matter as well here, and that is the simple fact that the Judge's assertion that somehow William Borders was working a scam on the Romanos simply is not logical. He was a prominent lawyer in Washington, DC, the President of the Nation-

al Bar Association. He helped choose Federal judges. He played a prominent role in the campaign of a President. How would he have accomplished such a scam, without consequences, either legal consequences or other serious consequences to himself? I don't believe that question can be answered.

And I am sure you are going to face, as you consider this part of our case, the observation that the Judge was tried and acquitted, but I want to make three observations about that.

There were two verdicts on this set of facts. There was the *Borders* case, in which William Borders was found guilty of conspiring with Judge Hastings to solicit a bribe, and then there was Judge Hastings' verdict—two verdicts.

In addition to that, if you will look at page 65 of the House report of the facts that followed our consideration of this matter, there are 12 important items there, very significant items there that were not presented at the time of his trial that were presented at this proceeding. I will not take the time to read them to you. I recommend page 65 of the House report.

Finally, how did Judge Hastings obtain his acquittal? He obtained it through the use of perjury and falsification of evidence, which is delineated in 14 of the Articles of Impeachment which are before you today.

In short, Mr. Chairman and members of the committee, Judge Hastings was a co-conspirator of William Borders, the evidence overwhelmingly supports that conclusion, and we submit to you that the defense that he has brought forth to you is implausible.

I will say a few brief comments at this time with regard to the Title III part of the case. I urge you, because I believe it deserves it, to give a closer look to the wiretap portion of this case.

The case against Judge Hastings on Article XVI, the wiretap case, has an element that the previous case does not have. It has the direct evidence corroborated by circumstantial evidence, the direct evidence being the fact that Mayor Clark testified consistently every single time he was asked to, in the same fashion, telling the listener that on September 6, 1985, Judge Hastings told him to stay away from Kevin Gordon, he's hot, he's using your name in Hialeah.

In deciding whether you are going to believe Mayor Clark or whether you are going to believe Judge Hastings' denial, we strongly urge you to carefully consider all the evidence that corroborates what Mayor Clark told us, his account of the facts, and then to consider also how far-fetched and impossible any other explanation of the leak under these circumstances would be.

There is no question but there was a leak. That is not an argument. The question is who made the disclosure. What is the corroborating evidence that supports Stephen Clark's unequivocal testimony that Judge Hastings made the disclosure?

First, we know and you have heard the Judge admit that Judge Hastings knew the very information that was leaked to Mayor Clark. That is not in dispute. And significantly, the information that was leaked by the Judge to the Mayor was precisely the same information that Judge Hastings had highlighted in his comments to Assistant United States Attorney Martinas and Special Agent

Santini in the August 15th, to the 29th, and September 9th progress reports.

In the application for the wiretap and the subsequent progress reports, Judge Hastings was provided with a wealth of information, but it was only those facts which he had singled out for discussion with the United States Attorney and the FBI agent that was leaked. Gordon was the target. Gordon would get the Mayor in trouble. Gordon was using the Mayor's name in Hialeah. Judge Hastings does not dispute that he made these comments in the course of reviewing the progress reports, and these were indeed the facts that were the subject of the disclosure to Mayor Clark.

You may remember during my cross-examination of Judge Hastings, we made clear the point that on September 5th, the day before the disclosure, Judge Hastings had heard exactly the facts which he has alleged by Stephen Clark to have told Stephen Clark that morning at the MMAP conference.

The second fact that has been established is that Judge Hastings and Mayor Clark were together on the very day that Mayor Clark told Waxy Gordon what he had learned, and there is no dispute that both gentlemen were at the MMAP conference on September 6th and spoke together at some point.

Monsignor Walsh, you saw his testimony by videotape, and Judge Hastings recalled the three of them together before the conference started. There is no doubt that the opportunity for Judge Hastings to have passed this confidential information to Mayor Clark existed. In fact, it is undisputed.

The position of Judge Hastings, of course, is that Mayor Clark is lying, and in support of his position, the Respondent, the Judge relies mainly on the discrepancy between the Mayor's description of the disclosure and the timing of the call that was made from Peter Ferguson, the Judge's aide, to set up a meeting between Waxy Gordon and the Mayor later in the morning of September 6th, at which time the Mayor wanted to confront Waxy Gordon with what he had heard about the use of his name.

We don't deny the existence of this discrepancy, but the fact that there is a discrepancy does not support the conclusion that Judge Hastings did not leak the confidential information learned through his supervision of a Title III wiretap. Obviously, the Mayor was wrong about the way it happened. We submit to you that application if logic to this set of events indicates that he was not wrong about the fact that it happened.

If you review the facts, I think you would have to believe, without any doubt, that Mayor Clark was indeed one who was told by Judge Hastings this very information.

First, Stephen Clark would have had to have another source for the information, because he clearly had the information. Nobody doubts that. And that source would have to know not only that there was an investigation of zoning matters in Hialeah, but also that Waxy Gordon was a target of that investigation, and that Waxy had been using the Mayor's name in pursuit of his attempts to influence zoning decisions.

Second, the other source, if it wasn't the Judge, the other source would have had to know that Judge Hastings was supervising the wiretap. It is totally improbable that Stephen Clark would have

chosen out of thin air the name of Alcee Hastings when he yielded to Waxy Gordon's plea that the Mayor tell Waxy how he had learned that Waxy was hot.

And third, Mayor Clark would have had to delay acting on the information he had received if he had gotten it from another source. In spite of his urgency, the urgency on the part of the Mayor that he immediately confront Waxy and tell him to stop using his name or stop doing whatever he was doing that was bringing the Mayor's name into the investigation, the Mayor could not act immediately. Instead, he would have had to wait until September 6th in order to time the meeting with Waxy Gordon for the same day on which he would see Judge Hastings.

If an FBI golfing buddy or some FBI source, as was implied by the Judge, told Mayor Stephen Clark this information, why then did Mayor Stephen Clark wait until September 6th, the day before he saw Judge Hastings, before demanding a meeting with Waxy to tell him to stop using his name? It is completely illogical.

I think I misspoke. Our point is why would he wait until September 6th, the day he saw Judge Hastings, before demanding a meeting with Waxy Gordon to tell him to stop using his name, if he had gotten the information from another source previously. It's illogical to assume that he would have done that.

They suggested also that perhaps vengeful FBI agents recruited to set up Judge Hastings. I submit to you that is highly improbable, for obvious reasons. It is also highly improbable that a man who has to run for office, as Mayor Clark has to do, would buy into a peck of trouble like this. You would have to conclude that, in doing this, they were willing to jeopardize as well, if they were going to recruit Mayor Clark to somehow set up the Judge, these FBI agents would have to as well been willing to jeopardize the lives of Gino Giannotti, an FBI agent who was doing undercover work in one of the three investigations, as well as Johnny Rivero, the trusted informant. I submit to you, that is impossible. It is just simply not possible and it renders implausible that explanation on the part of the Judge.

We submit to you that these assumptions are simply without any credibility. We submit to you that Judge Hastings in fact disclosed the confidential information to Mayor Clark and that the disclosure was made before Judge Hastings made his speech that morning. We think the conversation took place sometime after Monsignor Walsh, the Mayor and Judge Hastings spoke, but before Judge Hastings went back upstairs to await the beginning of the program. You will recall, that is where Roy Royals came and got him to bring him back downstairs.

In fact, it is possible, if you will examine it, to glean from the Mayor's own words, recorded on January 17, 1986, that this discussion occurred at the opening of the conference, when people were gathering and greeting each other. What Mayor Clark said to Waxy Gordon in recounting the event was this, and I am quoting: "And everybody's saying hello, Judge, and he comes and says, 'Stevie, I want to tell you something.'" Let me repeat that. He comes and he says, "Hell, Judge," there at the beginning of the conference, not later. The Mayor's spontaneous account of the event in the tape-recorded conversation I think answers the ques-

tion that was earlier raised by Senator Rudman in questioning Agent Mazzella about whether it's possible for a witness to mistake a small group of people milling about, as opposed to a formal setting after a speech.

Why did Judge Hastings act as he did? Why did he disclose the information? There is no evidence that his motivate was a venal as the one we believe he had in the other part of the case we brought, but the absence of greed does not mitigate the devastating consequences of bad judgment that followed inevitably from the disclosure of wiretap information.

Whether Judge Hastings calculated the consequences of his actions, those consequences being that undercover agents' lives would be in danger, that long-term investigations of corruption would be undermined, or whether he just failed to consider those consequences simply does not matter. He disclosed the confidential information, it was intentional, and Judge Hastings himself has acknowledged that such an act would warrant removal from office.

Mr. Chairman, we thank you for your patience in hearing this first part of our presentation. Mr. Gekas has a brief presentation as well. We urge you to conclude that Judge Hastings should be removed from his office as Federal District Court Judge.

The VICE CHAIRMAN. Congressman Bryant, I have one question that may belong to your part, as opposed to Congressman Gekas' part, and that is the issue of delay, which I do not raise in terms of ascribing fault anywhere, but there has been a substantial lapse of time between these events and there's an issue of possible prejudice, loss of records from Washington, the death or incapacity of witnesses. There is the analog of the statute of limitations, for which none applies in an impeachment case, but public policy of requiring that cases be brought within a limited period of time. I would be interested in your comment on the legal aspects of that issue.

Mr. BRYANT. First, if this impeachment matter had been brought to fruition sooner than this, I would submit that we would have a corresponding complaint from the Respondent that we had rushed to judgment.

Second, I don't believe you will find, Senator, that any significant fact which has been brought forward by the House in proving its case could have been refuted by any deceased witness or by any evidence which might be alleged by the Respondent to have disappeared.

I think the case requires careful study, but once it has been carefully studied, the conclusion that Judge Hastings involved himself in this bribery scheme is simply unavoidable.

The VICE CHAIRMAN. Have you taken a look at other impeachment cases to determine if any as old as this one, with the lapse of time from the events in question to the time that the matter is brought before the Senate?

Mr. BRYANT. I have not.

The VICE CHAIRMAN. Thank you very much.

The CHAIRMAN. Representative Gekas, we have set aside about 45 minutes, and I think about 40 of yours are taken. Probably a few of those might be in answer to that question, so we will not

count those against you, but I thought I would advise you that you're running toward the end of the time allotted.

Mr. GEKAS. Thank you.

One quick answer that comes to mind as to the impeachment proceedings that differ from others, Senator Specter, one quick relevant fact that comes into play is that this is the first impeachment or first set of impeachments that arose under the act that allow the Judicial Conference or enabling a Judicial Conference to forward a case to the House for possible impeachment proceedings, and that in itself grabs a lot of time from the initial events, particularly in this case.

Mr. Chairman and members of the committee, Mr. Anderson, Representative Synar, Representative Bryant, Representatives Fish, Conyers and Brooks join with us in the presentation on this final moment of this case, and I too join in the chorus of accolades that must be accorded to staff and personnel and to the members of the Senate and their staff and personnel.

I say this to the Chairman and to the members of the committee: The duty and responsibility of the prosecutors, managers, members of the House in this case, just like the prosecution in any case, is to, with all the vigor at its command, to reconstruct, as pictorially as possible, the events that are the subject or the case.

We have strived mightily to do that and we believe that we have succeeded in placing before the committee a total picture of what happened as to the conduct and the misconduct of Alcee Hastings. But those pictures, that panorama, that reconstruction depends a great deal in this case, as we know and we have reiterated through your questions, through your comments, through the way that we have presented the case and through just common sense conclusions that can be drawn, was based in great part on circumstantial evidence, in other portions on direct evidence, and in others a combination of both.

If we took the scale of justice and placed it before these proceedings, and even if we were to conceive for the purpose of arguments that they balance absolutely perfectly when you put all of the evidence that the Respondent has presented on his own behalf and that which the House has presented, assuming for a moment that they are balanced in all the circumstantial evidence, direct and so forth, one pebble comes forward, indeed it is a rock that, when added to the evidence that has been presented by the House, clangs the side that calls for a finding of guilty, right down to the floor of these scales, and that I submit to you, members of the committee, is the guilty flight of the Federal Judge in question.

Those reconstructions about which I have talked allow the leaping forward out of all of this evidence of one image, which is unforgettable and incredible and puts the stamp of incredulity on everything that the Respondent has set forth in this case.

Are you ever going to be able to forget the image of a Federal Judge hearing that his best friend or one of his best friends, a lifelong friend has been arrested and has forwarded the word to him that he has been arrested and receives a message that the FBI wants to talk to him?

Can you ever forget the picture, then, of a wild scramble, a panicky behavior, a frightened behavior—I'm using words that are

drawn out of the evidence in this case, from the words of the Respondent himself—and then scurrying around taxis and airports and rushing 30 miles away, and passing telephone after telephone, and arriving at Baltimore-Washington Airport, where there are a bank of telephone calls, and then flitting back from one to another and making calls back and forth in a frantic way to make communication with people in Florida—can you ever forget, as you are weighing this evidence, that image that comes from this reconstruction of a panorama of facts and circumstances that we have presented for you?

My deep thought in this is that even an ordinary citizen, not one who has taken the oath to be a Federal officer, not one who is king of a chamber in a courtroom where the aegis of the United States of America backs his every action, but an ordinary citizen who hears that his best friend is in trouble, an ordinary citizen would try to find out why, if he was innocent, why, what happened to my best friend, I've got to find out.

And even an ordinary citizen who is told by the FBI wants to talk to you would respond—unless he was guilty of some offense—would respond, "When, where is the FBI, where can I find him, I'll talk to them. My friend is in trouble and the FBI wants to talk to me? Lead me to the FBI, I'll talk to them."

And now you supplant a Federal Judge who wields a gavel of power in a courtroom, who decides the rights of citizens of our Nation in his courtroom, who defends the Constitution of the United States, a Federal Judge who is asked by the FBI to contact them—the FBI, which is an organ of the court, which is a manifestation of the supreme justice of the country, the investigative tool of the court itself, the one which has to apply for wiretap authorization and all the sundry things in law enforcement—a Federal Judge who, when his best friend is reported to be arrested and when the FBI wants to talk to him, flees the scene? That is the indelible stamp of incredibility incredulity, incredible manifestation of action and conduct on the part of a Federal Judge. That is the essence of what we would like you to recall about the flight.

I know I am nearing the end here, Mr. Chairman, as you indicate——

The CHAIRMAN. I do believe that your time is expired.

Mr. GEKAS. I end my statement with a quotation from Senator Ervin in a previous impeachment proceeding or the Watergate proceeding, where he harkened once again to Sir Walter Scott: "Oh, what a tangled web we weave, when first we practice to deceive." That's what he said and, gentlemen, the tangled web of Alcee Hastings now unravels in the Senate of the United States.

We thank you.

The CHAIRMAN. Thank you very much.

Mr. Chairman, before the managers called their first witness on the allegations in Article XVI, dealing with Judge Hastings' unauthorized disclosure of information obtained from a Title III wiretap, we formally alerted this committee to precautions the House had taken in its proceedings to protect individual privacy. We pointed out that we tried to avoid unnecessary disclosures in open sessions of the identities of individuals who were not central to an under-

standing of this matter, and we redacted materials included in the appendix volume on electronic surveillance prior to publication.

We are pleased to note, as these proceedings draw to a close, that the principle of trying to respect individual privacy has been honored in the questioning of witnesses. We are left, however, with the issue of how to avoid unnecessarily compromising individual privacy in the publication of Title III related exhibits.

In connection with that matter, we accordingly move that the committee issue a limited printing of the unredacted Title III related exhibits for the exclusive use of the members of the Senate—followed by a later printing of these exhibits in redacted form for general distribution. Such a procedure would ensure that the trier of fact would have complete access to the exhibits—as the members of this committee have had—and would remove the redaction issue from any adversary context. It should be noted, in this connection, that no individual involved in litigation, civil or criminal, has a right to publication, at government expense—with nationwide distribution, of exhibits introduced at trial. Under our proposal, Respondent will remain free to make such use as he considers appropriate of his copy of the unredacted exhibits—although hopefully he will act responsibly in connection with any possible dissemination of Title III related information.

The managers believe that the Senate should make its own judgment on specific redactions prior to publication just as the House made its own judgment on this matter. The House's judgment was expressed in the redactions made in Appendix IV to the hearings of the Subcommittee on Criminal Justice. The committee may wish to examine the redacted, printed version of various exhibits in deciding whether to make similar redactions prior to its publication.

In the event the committee rejects our suggestion for a limited duplication of unredacted Title III exhibits for the use of Senators and decides against making its own redactions prior to publication, the managers request a reasonable period of time after the conclusion of these hearings to submit redacted versions of exhibits to be substituted for unredacted Title III exhibits. The managers will utilize the redactions incorporated in Appendix IV for guidance but will seek to eliminate those deletions that have been superseded by testimony presented during these hearings. We point out to the committee, in this connection, that informal discussions between counsels on both sides indicate wide disagreement on the redaction issue. Suffice it to say the managers' position is that the surreptitious recording of conversations is a necessary tool of law enforcement under appropriate safeguards, but every effort should be made to protect individual privacy—prior to publication—consistent with the needs of the parties to have the full Senate consider specific information.

The CHAIRMAN. At this point, we would hear from the Respondent's counsel, if he would summarize his case.

SUMMATION ON BEHALF OF THE RESPONDENT

Mr. ANDERSON. Mr. Chairman, members of the committee, I am inclined toward Senator Rudman's view that closing argument will be done in the well of the Senate, but my real goal tonight is

you've all asked some hard questions and I wanted to respond, at least from my standpoint, while the questions were still fresh in your mind, before the answers solidify.

I also want to discuss with you some of the questions that I think appropriately, given the fact that you are examining the Judge, but some of the questions that occur to me that weren't asked but I think deserve your consideration as you consider how you will advise your colleagues when you retire behind closed doors.

Let me start with a question which I think was implicit with several of you, but I think was raised by Senator Durenberger initially, what is the standard of proof, what standard should be applied, and I want to relate that also to a question about what is the burden of proof.

The answer is going to come down to every one of the members, but I think—and I will have the quote by the time I write or speak on it, but Justice McKenna of Ireland said it, in my view, in a way that makes sense here.

In England, they only have the preponderance and beyond a reasonable doubt as formal standards, but Justice McKenna noted, as we all must know, that there are degrees within any standard. He talked about the difference between a simple negligence case and a case where you are charging a man with fraud or some corrupt conduct, even in a civil matter, and he said the standard is different.

He talked about a simple shoplifting case, a criminal traffic infraction, as opposed to a capital felony, where a person's life is at stake, and even there within the beyond a reasonable doubt standard there's a big difference.

And his conclusion and the one that I draw is we must be satisfied to a degree of certainty appropriate for the occasion, and it requires you—this is not a traffic case, this is not a simple negligence case—you have rule in some respects that it is not essentially a criminal case, but you cannot deny the fundamental nature of this occasion, and that nature comes in a variety of ways.

In the first sense, you deal with the fate and future of a man. What is at stake here is not whether Alcee Hastings will hang onto a $90,000 a year job. What is at stake here is this man. For four weeks, you have observed this man. I am sure he has irritated you at times. I trust that you are aware that he irritates me at times. It doesn't make any difference. This is a man who, in my view, is touched with greatness, and you must decide are you satisfied, is there that degree of certainty on this occasion that you are willing to say he shall be thrust aside and consigned to infamy. That is the degree of certainty, that is the burden of proof, that is what you must tell your colleagues you are satisfied with.

There are other aspects to this occasion. I shall return to the fairness concern and the records that have disappeared, but you know that this man has submitted to a trial before a jury of his peers, under that system of justice which we have inherited and developed. The rules of evidence are not mere technicalities, and forms of trial are not mere technicalities. They are the wisdom, taken from England, adapted and adopted and developed in this country.

In 1983, 12 of your constituents—not your constituents but 12 constituents of some Senator sat in a jury box and did what you did and, admonished by a fairly rigorous and respected jurist, Government represented by able counsel, decided this was, in the words of one of them, a circumstantial case, that was shaky at best, an investigation that didn't finish.

I think also, because this is the first time in history in which you will decide what degree of certainty must we be provided 5 years after the fact, such that we are willing to stand at the bar of history and say we disagree, we are so satisfied that the jury was wrong that we are now prepared to say we reverse—for you are going to, and I need not talk legalities, you are impeaching a jury verdict, you are impeaching the trial—what degree of certainty is appropriate for that occasion.

I want to emphasize also the historic nature of the occasion. There have been impeachment trials of Federal judges before. Prior to the 1980's, they were all judges who had never been tried elsewhere or elsewhen, and so you had to try it straight-up. Senator Specter, there are cases where the delay was longer, but there is no case where the discovery of the underlying events and the bringing of the charges was longer that I am aware of.

But you stand here in a peculiar circumstance. Representative Gekas is correct, this is the first case under the Judicial Conference Act. Apart from one case in Australia, it is the first time an acquitted judge has been called to the bar, and in the Australian case the Parliament had, in its wisdom, said thou shalt not even inquire to facts determined by a jury.

So, you deal with history. What is our history in terms of hard cases? Where are the cases where a man was acquitted, or a person, where history has come to think badly of the circumstance? Where are the cases where people were convicted on circumstantial evidence or elsewhere, where the questions remained and history has come to rejudge again?

For you will stand you will counsel your colleagues: How do you want history to evaluate the decision in the impeachment trial of Alcee Hastings? That is the occasion. That is the degree of certainty you need.

Let me raise with you one of the questions that wasn't asked, it has been developed, but you need to be reminded of it while it's fresh in your memory, and it bears on two aspects. Context has been overused here, but who is this man? In a logician sense, base theorem, if you are going to evaluate evidence, you start with a prior probability, and you have to ask what is the prior probability, given the facts as they begin at the beginning, before I look at the evidence, what is the prior probability, how probable is.

You have a man who had conquered everything, who had not sought money, who had sought service, politics—there's no question, Alcee Hastings is not a perfect man, but the word in his trial testimony which struck me was he was not indifferent to money, but money was indifferent to him, and it is clear that the status and the things that Alcee Hastings sought related to service to his community and the recognition that brought, and it related to other things.

You must evaluate the man. What, as it stood as of 1981, was the probability that a man who had done what Alcee Hastings had done, who had no interest—not no interest, but who had evidenced the ability to live comfortably within means less than that of a judicial salary, what is the evidence, what is the probability that such a man would go forward.

You must also look at the posture of your probability, and that too has two aspects, and I want to talk again a little bit about some of the missing evidence here, but it will come forward later.

In the first instance, you must know that since this event and since the trial, this man's finances, everything about his life have been torn apart, not a contribution to his defense that has not been examined. You can look at the IC record, you've got more cancelled checks and receipts than you want to check. Everything in this man's life has been looked at, and where are we in 1989?

He was a conspirator in 1981 and he made a disclosure to Mayor Clark in 1985—nothing else. This is not a man where you can say there is a pattern of underlying corruption, only two events—the trial, if you wish, but I will come to why I think you are in a binary decision there and you have only one issue before you.

But also what about south Florida? Where are the people who come forward who say we, too, are troubled by this jury verdict? Where are the fellow judges who come forward and say there is a stain on our court and we have questions about him? Where are the lawyers who come forward and tell you "We're worried about what's happening in south Florida, this man is unworthy of being a Federal judge"?

Instead, you have former chief prosecutors, Neil Sonnett from an earlier day, Marty Raskin from today, coming forward to say, "This is a judge who I trust, this is a man who, after his verdict, I appear before him with confidence, he is a fine judge, he is a fine man, I have trust in his integrity."

Where are the local people who come forward and say to you, "Remove this man, for he is not fit, remove this man because the shadow cast is so long we cannot recover"? Judges from other districts, by way of Atlanta, through Washington, through the House, the managers bring before you a case based on circumstantial evidence, but where are the people he serves, where are the lawyers who must submit their clients' causes to him, where are the colleagues from his court who will tell you that this man is not and does not continue to be a worthy Federal judge?

How does that bear on the probability? I suspect, other than myself, that there may not be too many people in the southern District of Florida who have studied in this detail that the managers and their staff have, but the evidence there is pervasive, the newspapers, the rest of it is all there. You would expect to find the impact among those who must really trust the man.

When I go before a judge, I'm very uncomfortable unless I know—there are judges who disagree with me, but I trust, I'm going to give a shot and they are going to do their best and I'm going to do mine. I'm very uncomfortable when I don't have that trust.

Where are the people who do not trust this man, who he serves, and where have they been?

But let me talk about another probability, and this goes to the burden of proof and the missing evidence. It was asked, what about Borders, was he a gambler, did he have a financial need, was there a problem. Who should bear the responsibility for the fact that evidence isn't before you? We know he hung out with Joe Nesline, who was a compulsive gambler. We know he was a lawyer with no files, we've heard that. Why aren't his tax returns before you? Why aren't the possibility? We know he went to every major sporting event. Maybe he was a lawyer braggadocio who got in trouble and Joe Nesline provided the opportunity—we don't know that.

Is Judge Hastings to bear the responsibility for the fact that you don't know what Bill Borders' motives were, or is it some failure that must be negative inferences, if they are to be drawn, must be drawn from—why isn't that evidence before you, if this is a thorough and impartial obligation?

We can't reconstruct that now. It could have been reconstructed. The FBI, Mr. Doar, those things must be available, at last in some aspects, the man's tax returns. We could have torn him up as well as we tore Judge Hastings up. Why don't you have that to pull out of your case and ask the hard questions? Well, it is not there. So, that is on piece of data that might have been obtained.

But it also brings me to the whole nature of a circumstantial case and the burden of proof. I concede freely, there are circumstantial cases that justify a conviction in first degree murder and whatever you want, but there are circumstantial cases that do not. I want to submit to you that this is one that does not and I want to tell you why.

A circumstantial case may be one in which all of the pieces of the puzzle are right there on the table, you begin to fit them together, they interlock and it is quite clear that it is the Mona Lisa but for the smile. The only pieces that are missing are the smile. Well, it is only circumstantial evidence that that was a puzzle of the Mona Lisa, but it's pretty powerful.

But there's a different kind of problem where there are too few pieces or only scattered pieces or only such pieces as the players chose to keep, and then you keep pushing them around the table and saying, "See, if I line them up like this, it looks a lot like it might have been the Monsa Lisa, and if I line them up like this, with the colors differently, it looks a lot like it might have been Puff the Dragon." And you've got a choice to make, is it Puff the Dragon or is it the Mona Lisa?

But let me now turn, because all of you, I think quite correctly, in challenging the Judge on the hard questions, asked questions designed to say, "Well, look at the evidence this way, Judge, it looks a lot like the Mona Lisa to me," so let me push a bit on some of your questions and say, "Here's Puff the Dragon, folks."

Senator Bingaman, you asked me what individually is the single hardest question to answer, how did Bill Borders get that damned information about the *Romano* case. Judge Hastings has told you about security problems in the courthouse and those are all possibilities, but it doesn't satisfy me any more than it would satisfy you, so let me push a couple of pieces around the board and let me talk with you about how he got it.

What do we know about that? We know Joe Nesline, by all accounts, was a significant underworld figure. You heard Agent Shull tell you, Genovese family members, the Cellini family in Miami, this is an operator, you can see the investment the FBI put into investigating him. Joe Nesline didn't need Billy Dredge, the former friend who came back to repay him $500, to find out about the Romanos.

If in point of fact, because he was in gambling trouble, because he was a braggart, because William Borders, the little league fixer, had moved into the big-time because of his rise in his ability to influence the appointment of Federal judges, for whatever reason, Billy Borders dealing with Joe Nesline where was this deal in all plausibility, had to begin. There's no reason for trust Dredge, in my view there's no reason that anyone could ever trust Dredge, but that's a different point.

There apparently was a relationship between Nesline and Borders and Nesline knew how to reach out. Trafficante, he could have found the Romanos, he could have found anything.

Now, what kind of information was it that Borders needed—and I want to move now up to his first meeting with Rico/Romanos, which is the only point where you have anything responsible—what kind of information did he need? He needed two facts. He needed—well, he needed more than that—he needed the fact they had been convicted, he needed the fact they had been sentenced, that's not terribly tough, but he needed the fact, and this is tough, that there was a possibility, a substantial, a significant likelihood that a substantial part of the property that had been forfeited might be returned, and he needed the fact that the order was likely to be out by September 30th.

Where are the facts, where does he get those? This is not the stuff that Joe Nesline deals in regularly. How? You heard Neal Sonnett say that he told the Romanos after the July 8th hearing that he thought Judge Hastings hadn't read the case and when he did, he'd reverse himself. That's pretty good advice.

Now, I submit to you—another one of these prejudicial things—the Romanos, it is certainly plausible, perhaps probable, were in communication with Joe Nesline. If they weren't in communication with Joe Nesline about a bribe, sure as heck, if Joe Nesline or one of the other people, one of the people who sent slugs to him in Florida, one of the Cellinis called up and said, "Tom, Frank, how's the case going? I understand that you had an argument on that forfeiture, RICO"—you know, you heard Agent Shull say that one of the bosses of the Genovese family, to which the Romanos are imputed, talked affirmatively about the problems the RICO Act was taking. The boss calls up and say, "You know, Tom, Frank, we've got a problem, we're scared about this RICO, what about that forfeiture thing?" That information is there, it's on the street and it's Nesline's for the asking.

Can I prove that? No. Can I say the pieces of the puzzle fit together to make that possible? Yes. Who's responsible for the parts of the puzzle that I can't bring up to show it? Does Judge Hastings have, 8 years after the fact, the burden of proof of compensating for an incompetent Joe Nesline, for a dead Tom Romano, for a dead Frank Romano, or is that a burden that someone else had to

take, someone else who had to say, "All right, if we're going to do this, extend this thing backward, someone better make Joe Nesline talk, someone better get to Tom and Frank before they die, someone better crack this nut or we'd better forget it, because it ain't fair afterwards."

He knows that, but what about the other stuff, the sort of ongoing stuff? Well, I want to talk now about Billy Dredge for a while and see what you think about that evidence, and I want to look at—I'm going to come to the chart—but let me start out with one of the things that—you've heard other angry people, let me be an angry logician.

If you're going to do logic and you're going to do induction, it's my understanding that you need an adequate pool of data, a representative sampling of data, and you need to provide a consistent set of protocols, you've got to reason with it the same day.

Now, either we are going to look at the pieces of the puzzle that are preserved—telephone messages, telephone logs—or we're going to look suspiciously at the holes, but you can't look at the hole and say, well, that means there was a donut there, and then look at a piece of donut and say that means there was a hole there. Either we are going to look at the pieces that are there or not, and Dredge illustrates most fundamentally the kind of problem.

Dredge to the FBI, "Borders is engaging in other scams, I've known him for years," and at least one comments that suggests he has physically engaged Hastings and Borders discussing this stuff.

Dredge to the Investigating Committee—he can recall anything, but as near as he is willing to commit to anything is, "I met Borders sometime between the indictment in the Baltimore case and my arrest." Agent Shull/Joe Nesline: Sometime after the arrest, I introduced Billy Dredge to Bill Borders."

Eighteen hours of work with the document and what have you? A theory that has been crafted by the Investigating Committee and refined, and Mr. Dredge has a new view of it, sometime in March. Let me show you why that won't show and let me point to you, if I may, and I will try and keep my voice up, but I'm talking with you all now and I hope you can hear me.

Beginning with the indictment on April 29th—I don't see a message there. The arrest is on May 10th. The first recorded contact is May 5th, Borders leaves his number with Dredge. The first recorded contact between Nesline and Borders that year is a message pad on April 9th.

On all travel—we are big on the difference between Baltimore and National Airport—on all travel prior to this division, what we know about Mr. Dredge is that he flew into Baltimore, where his problems were. On all travel from here until July 30th, when he drops off the map, all his trips are into DC National.

To the extent there is a record of Billy Dredge's conversations in Borders' records or his, there's a pattern here, they are talking regularly. That is looking at the pieces of the donut and saying, "Yes, I can see there's a donut, there's something going on here."

Now, how does Mr. Dredge explain the answer? They were engaged in coded conversations during the innocent phase, but they sort of loosened up and began to use the long-distance telephone at the point in time when things got hot.

I just don't buy it, and I don't think you can. It may be true, but you can't 8 years after the fact, when the records aren't there to do it, suddenly come up and say, well, we are going to buy—a man who has not told the same story twice in the same way—we are suddenly going to buy the notion that early in March he was in the DC area, he flew into Baltimore-Washington Airport, that's what we know, not that he's in the DC area, and then he casually, after studying the record for 18 hours and seeing where his trips are and knowing you have to count back from May 11, four meetings at least, to make May 11th be a date of any significance whatsoever. William Dredge could count and he counted four meetings and said, "You're right, I must have met him on March 8th," and he can recall Joe Nesline in the apartment and the gambling.

Now, let me talk about that first meeting and its inherent probability. Dredge, by his own account and by Nesline's account——

The CHAIRMAN. Mr. Anderson, I regret doing so, but we are halfway through this vote and I think we need to interrupt your statement and return as quickly as we can.

We will stand in recess.

[Short recess.]

The CHAIRMAN. The committee will come to order.

Mr. Anderson, again I apologize for the interruption. According to the clerk, when we did interrupt you, you still had 23 minutes left. We will give you a couple of more until you build up steam, so go ahead.

Mr. ANDERSON. I appreciate it, Mr. Chairman.

We were at the point, as I recall it, of the inherent improbability of Mr. Dredge's story being possible in terms of when he met Mr. Borders and what his role was. But let me focus, because it was a subject of serious questioning on the significance of that, if I might for a moment.

In the questioning the events of May 11th and the related parts were marshalled. The House theory, as I take it, is Mr. Dredge has said there would be a sua sponte continuance, and we have a continuance. There is only one continuance in the *Romano* case, reasoning backwards, one has to marshal the data to make May 11th a significant date.

I frankly believe the evidence suggests the only plausible time for the first meeting between Mr. Borders and Mr. Dredge is perhaps some telephone calls in late April and that trip to Miami on May 5th. But it goes beyond that, so let me account for the problems with Mr. Dredge's story, even if reconstructed.

On May 10th, Dredge was arrested. At 5:38 p.m., according to the House, Borders called Dredge. Now, that's telephone records, Borders to Dredge's residence, so one thing you know damn near for a certainty, unless the DEA is pulling—William Dredge was in jail, there was not that conversation and that day he was arrested, it is highly unlikely his immediate concern was getting a report on the *Romano* case. The man had just gone down on a drug bust. Borders didn't talk to him on that day.

But you remember Mr. Dredge's testimony, and we only have to readjust the dates, is the day before the sentencing Borders told him there would be sua sponte continued, the day after the sentencing Borders told it had been sua sponte continued. Where in

these flags do we find the day after conversation with William Dredge? Was that a pay phone code? Jesse McCrary got him out of jail, the first thing he did was nip off to a pay phone and set up a coded conversation with William Borders, or did they do that while he was in jail? It doesn't fit.

What really happened? And now I, like the House, am marshalling scattered pieces to give you a plausible hypothesis. I'm not going to tell you I can prove it. I'm going to ask you whether I have to. But I will tell you what happened.

Right there, as Dredge told the Investigating Committee in early May, indictment April 29th, arrest May 10th, that's when he met Mr. Borders. The four events occurred and I'm willing to—I don't know that it happened, but I'm willing, let me take at face value his notion about a *sua sponte* continuance. Dredge was in Washington on July 7th. July 7th is the day that William Borders beat President Reagan in his lawsuit. Dredge reports—and I'm inclined to believe him—that Borders was ecstatic. He was bragging that he had the power to make a few more judges now.

July 7th was the day before the July 8th sentencing. If it happened at all, that's the day and the only day that is consistent with the evidence. When Bill Borders said, "Look, Dredge, he's going to grant a *sua sponte* continuance tomorrow." But what happened tomorrow?

Alcee Hastings sent the Romanos to prison for 3 years. William Dredge knew that Alcee Hastings couldn't fix a continuance in Alcee Hastings' courtroom. Now, William Dredge, whatever else he is, is a man who accounts for his own interests. What happened? William Dredge got himself a real trial lawyer, Roger Spaeder, a little insurance there—no guarantee, just a little insurance, and William Dredge got into the Government.

Now, Dredge saw Trafficante there, perhaps, I'm inclined to believe that. He may have also seen—I don't think he was dealing with the Romanos, I think Joe Nesline was the broker who was dealing with them both, but he picked up the information, he was the bag man. "What do we do? Let's play let's make a deal." "I'll give you a lawyer." "Is that worth a drug case?" Not clear. "How about a lawyer and a judge, is that worth a deal?" "That's worth a deal."

Mr. Chairman, how did Borders keep informed? The fact that there was a substantial amount of property likely to be returned is simple: Anyone who had access to the Romanos would have said, yes, a lawyer told us that. The fact that it was likely to come out by September 30th was simple: In his not confidential information in any judge's chambers, when law clerks come and go—and most law clerks, from about June on, if not before, are looking for a job. That's not a hard prediction. If you are going to predict when a case is going to be resolved, find out if it's an even numbered case that goes to the clerk and find out when the clerk is leaving, because most judges like clerks to finish up. Those aren't hard predictions to make.

But there is some stuff going on here in the background during the September 12th period onward. What do we know about that? We know from the body bug that Bill Borders said, "Dredge, wait, I want to talk to you after the meeting at Miami Airport on Septem-

ber 12th. That occurred, we know from Professor Shuy's enhanced transcripts and this, that and the other thing—continuous allusions, "the other guy, it should have gone that way, someone's in this deal for 20"—who's in it for 20?

And finally we come down to the crucial part of the sequence of calls. We're challenged to account for this pattern here. October 2nd, Borders to Hastings' chambers; October 4th, Borders to Hastings' home, a message—no claim of any conversation, no evidence of any conversation. Finished the order, October 5th, 4:22 p.m., "Order out today or first thing in the morning—your friend should have told you."

You've got a lot of holes here, but no pieces of the donut to show communication between Judge Hastings and Mr. Borders in this period. But Borders' confidence is, "Your friend should have told you." Who's the friend? I can't prove that the friend is Bill Dredge, but is that my job? There's an unaccounted for friend running loose in here. The FBI has to have kept Bill Dredge informed of developments, because they knew he might get a call from Borders, verifying information. They cannot have left him blind ignorant. Where else does that friend appear?

William Dredge? No, not there. On September 15th, Bill Dredge calls Caesar's Palace in Las Vegas. Can I prove that he talked to Bill Borders? Could I prove that they set up a pay phone-to-pay phone gimmick? No, I can't. Can I suggest to you, the evidence shows this is a venal man? This is a venal man whose report of cooperation and sentencing in the drug case was largely dependent upon whether he made good or at least cooperated a lot and suggested his information was reliable about Alcee Hastings. Yeah, I can do that.

Why am I, why is Judge Hastings, where's the evidence about that phone call and the other records? Where do we check the pay phones? God knows, you have pay phone records that were looked at and called up. Where were the pay phones to find out were there any calls outside Caesar's Palace made back to Miami that night?

Do you want to know how Bill Borders knew Alcee had dined at the Fontainebleau? I submit to you, it's just as plausible that he found out from the "other guy," the guy that is in it for $20,000, the guy who had every reason to monitor it and the guy who the FBI had to keep posted on developments, Bill Dredge. I can't prove it, but I can say there are a lot of pieces and, when I line them up, they look a lot like that to me and that's the only plausible scenario. scenario.

But let me come back and now confront some of your other specific cases on the circumstantial question. Let me take seriously for a moment, although I must confess, I cannot in reality, this May 11th problem, look at that pattern of phone calls, Judge, how do you make out for this?

I can understand why Dredge and Borders are in contact. Dredge has just been busted and he's in jail and, for whatever reason, he is initially dealing with Bill Borders.

What else is going on in Alcee Hastings' life that might account for these contacts? Let me run through—and I desperately want you to understand that these two men are, however you describe

their friendship, their relationship, they've known each other a while, they talk, they socialize and there are a lot of topics to talk about; it isn't just Hemphill Pride and the NBA.

We do know there was the NBA meeting in February and there is a contact around that time. We know Pride was released and that called for talk. We know, most importantly, this conversation on April 21st, Alcee L. Hastings, April 21st, which would be about there, sent off a proposal to Bill Borders and to the Chairman of the Judicial Council part of the NBA, "Let's set up a specific program of psychologists, but more important, let's get Jimmy Carter or Griffin Bell to a fund raiser, and let me make it clear at the outset that I think the proceeds ought to go to the Judicial Council side, rather than the general membership side," a serious proposal. "Would you do a follow-up call on April 23rd? Would you be trying to monitor what the status of that proposal is from time to time over this period?"

Can Alcee L. Hastings tell you that that's what those calls were about? No. It's 8 years after the fact. If I were to go into your telephone records and find that you were involved in a piece of legislation and you had calls to and from people who were also interested in it 8 years ago, can you tell me that that is what the conversation was about? No, but you could say that's probably what it was about. It sure as hell is plausible.

I can go on at every point in time. There is adequate reason to justify the contacts and the timing is just about as coincidental as the House would have you believe their coincidences are.

But let me now confront some of the additional questions that I understood to have been asked with specificity while we were making the Judge respond.

What about Borders' prediction of dinner at the Fontainebleau? The Judge has conceded, I conceded, anyone who has ever looked at it, it's suspicious. Maybe he should have gotten up and checked two restaurants, rather than one. Maybe he should have said, when he came back to Ms. Thompson, I was waiting for Bill Borders. Maybe he should have done something more. But frankly, if he were covering himself, he would have done something more.

But what about the other prediction that failed? We have precisely the Judge was within 15 minutes of the predicted time on September 16th. Everything you know or heard about this guy, he's pretty good on detail. He lives up to his bargains. The bargain was that order would be out on September 29th. There is nothing difficult about that. Miller produced it within 24 hours of being told to get it out.

Where is the evidence that the Judge, $150,000 riding on the table, $25,000 down on September 19th, "we've got a deal, the good-faith money's down, get on with it, Judge." Where is the evidence of any pressure? Where is the evidence of pressure, "Miller, get the order out, come on, Jeff boy, you can do it, Jeff, you've got to get to Judge Paine." Where is anything between September 19th and September 29th?

Where are the contacts from Borders, to the extent he had any doubt about the Judge's ability? Where are the contacts, "Judge, the order, the order, I know you're busy, guy, but tell Jeff or some-

body to get the damn thing out. Our credibility is on the line, September 29th is coming."

At any time up to September 28th, a Monday, one statement from the Judge produces the order on the deadline, the deals are locked. Is this so trivial an affair, that this man, if he were in a deal, wouldn't bother to do it that way? These guys are busy plotting codes, hastily constructed partial word codes when they shouldn't need them. If the House's theory is correct, it was a done deal, and all the Judge has to do is say, "Get off your * * * and get that order out," and it's all over, there's no need for further communication, everything goes smoothly, they don't have to chat about it a bit.

No, you can't have it, the hole in the donut. If you're going to look at the donut of September 16th and what happened there, then look at the fact that there ain't no donut on September 29th, and that's got to count for something.

And what about October 5th and the call? Two points you have to explain, and I'm sorry John Bryant hasn't explained to me, the fact that at 4:22, in the absence of any contact, Bill Borders told Rico, "The matter has been taken care of and your friend should tell you about it." How did he know, unless there is a third channel, a back channel? And the fact that there is no conversation, you have no evidence—you have evidence of once the Judge used a pay phone, he told you he used them a lot, he told you he didn't always call from home or the office, but the entire pattern of his phone bills is he charged it to home, there's got to be a record, he charged it to his hotel, he did this. Where's the record of the contact?

At 4:22—I think it is 4:22 or 4:42—Borders always told Rico/Romano, "It's taken care of." The pattern has ended, the deal is done, then the conversation. Let me respond to the problem of the hastily constructed word code. First of all, to the extent this is a strange conversation, you have a judge who has been in jury trial all day, the end of the day, sometimes I'm just the tiniest bit cranky. You have a lawyer who is in his office at 5:12, and if I want to get something out of someone, I don't call them at 5:12 in the evening. They are likely to be tired. You have a judge who tells you he's got serious ethical concerns about what he's doing. If I have serious ethical reservations about what I'm doing, I don't advertise it, I don't talk as free, I'm a little guarded.

And what's the conversation? "I've drafted all those letter for Hemp." I'm a little embarrassed, but that's what I've done, and everything's OK. "The only thing I was concerned with was, did you hear from him after we talked?" Well, we know they talked, we know they talked regularly. But the concern was raised, "See, I had talked to him and he, he wrote some things down for me," and the problem there was if Hemp was talking to Borders on the phone, how did he write some things down for him? Hemphill Pride testified, he was in Washington and he met Bill Borders in September, in a coffee shop, and that's where he could write some things down for him. "And then I was to get some more things"—on his knees or whatever, that is how Judge Hastings heard it. "Ah, well, no big problem at all. I'll see to it and I'll communicate and I'll send the stuff off."

The question is, well, why didn't you ask him. The reason he didn't ask him is they have a prior pattern of communication. I speak with some member of my staff and say, "Look, my broker"—I don't have one, but my broker—"is going to call if he's able to sell my 2 shares of AT&T at 50 today." I call later in the evening and say, "Did my broker call? Yeah. I understand. I had been told the stock"—because there is a prior set of conversations that went on, this is not even hard to understand against that background, with an additional fact.

You got two draft letters, a draft letter to raise money and a draft letter soliciting character references. But you've got a third draft letter in those six perfectly written pages, and it's a letter transmitting those drafts to Hemp. The reason there's no big problem is that Alcee Hastings assumed Borders had been talking with Pride, whether he had been or not, and Alcee Hastings was only sending these drafts to Columbia for Hemphill Pride's approval. All he needed to know was that Borders had enough information and thought there was enough information there to fill in the blanks on the amount and the rest, and that's enough to say, "No big problem, I'll send it off to Columbia," because all it's going to go to is Hemphill Pride on the first cut, "Are these drafts acceptable, do you want us"—now, it may have been that Mr. Pride was telling you the truth. He would have said, "Good God, Judge, the last thing I need down here is any of you outsiders fiddling with my property." That's where the Judge was going to send those letters.

But there's another problem that has been raised and I need to confront it—delay in production. I don't want to second-guess lawyering strategies. I don't want to do that. You have watched a certain amount of elbowing in these rooms here. We don't want to be surprised, but occasionally there have been a few surprises here and there. That happens in a trial, I'm sorry about it—no, I'm not sorry, but it wouldn't be fun if it didn't.

But you've got to understand the delay in production is, to my way of thinking, irrelevant, unless you think Alcee Hastings is a stupid man. By whatever standard, when those tapes were produced, letters for Hemp were at play. That is in January, early February 1982, whatever fabrication was to be done would have been done by then. The fact they weren't produced until December is an irrelevancy.

You're working in a time span of, were they done on October 5th, you had Shorter's testimony he showed them to him in March. The fact they weren't produced in December, I can tell you why I might not have produced them if I were a lawyer, I can tell you that on September 17th Judge Gignoux indicated he did think an appeal on the constitutional question stopped the proceedings, and I can tell you that there wasn't a further status conference by the trial court on what was happening until November 4th. But all of that is not even an explanation—I mean that's an explanation that accounts of why December, but it doesn't bear on fabrication.

Unless you think this is a stupid man, the only period you're looking at is October, until he heard the tapes. So, all of that to me can't bear in this.

Well, what about the combination of coincidences here? Yeah, yeah, yeah, yeah, I can explain this, I can point at that, I can take it apart and Puff the Magic Dragon and remarshal, but there's a lot of combinations here. Let me talk to you about other coincidences that you've seen happen before your eyes.

What about Kenny Robinson? Put aside the substance of his testimony. Put yourself in his position and have him here prosecute, say, Reid Weingarten or Anthony Amoroso. May 16th, Billy Dredge comes in and tries to fix a case. At the time, Kenny Robinson is defending Congressman Jenrette in a case where Anthony Amoroso is the lead agent, the undercover agent evolving a fix, and Reid Weingarten is a prosecutor—coincidence.

On October 9th or whenever The Washington Post gets around to it, Kenny Robinson learns Anthony Amoroso was running an undercover sting operation, using William Dredge as the undercover agent, and Reid Weingarten is a supervising attorney. What's Kenny Robinson going to—"Whoa, we've got a real problem here." What are the odds? What odds are you going to give, that just off the street, out of all the lawyers—and there are more lawyers in this town than there are in mine—out of all the lawyers who were available, a chap named William Dredge would run into Kenny Robinson and try and fix a case, in which it turned out he was going to work with Anthony Amoroso who is an undercover agent, and Reid Weingarten. Mr. Robinson accepted Reid's explanation, I guess I'm inclined to. But coincidence happens.

But let me turn again to where I started: History and the verdict of history. What degree of certainty will you insist upon? What about the fact that there are no telephone records for William Dredge from January to May 1981, because they are destroyed? What about the pattern, 1980, could we see what the contacts were between Judge Hastings in 1980? No, those records failed.

What about the fact that the L'Enfant Plaza doesn't have records so we could compare and decide how accurate their system is? What about the fact that C&P and AT&T don't have the HOBIS billing, the backup records—the only reason they keep them is so people can check for errors—those are gone.

What about the fact that Bill Borders had to have another number? No one has described him as a walking change machine. If he used the pay phone from 1970 on as much as he did, he had to charge the thing somewhere or he would have been walking around with rolls of quarters in his pocket, jingling. There have got to be missing records there, and who's to bear the burden? Is it Alcee Hastings, and he can't do it?

And do you want to go down in history as saying 9 years after the fact they were able to marshal what was left and make it look like there was a donut, so we ignored the holes? Or do you want to be able to say that we had before us a man who, by all accounts, came up the hard way, a man who had walked in moccasins that none of us can understand, a man who had walked on a path, which partially through his efforts and muchly through yours, had been shut off so that no person should ever again have to walk that path, a man who had gained the respect, love and admiration of those in his community, and a man who, after all of this, continues to have the respect, love and admiration?

Do you want to be said, as a people, we looked at the evidence and we decided it wasn't enough, and a part of our decision was that this man has had the integrity to bear these ordeals and continue to function as a judge, and, frankly, there ain't no risk in sending him back, there's none perceived in his own community? Send him back.

Now, I want to close by thanking the Judge's staff. Ms. Williams, Professor Katz and I would like to thank our staff, Ms. Hockberg, Tim Bishop you've seen here, Charles Francis, every day you've seen them here. You've seen my floating staff which comes in and out and I want to thank them all.

But I want to ask you to ask why are they here. It's fun, but it's not that much fun. I want to ask you why are some of these other people here, why do they come up. There is a man who has believed him. There is a man who, in my view, is touched with greatness.

You can look at all the data and it establishes probability. The standard of proof is what do you believe. Those who know the man view the data in one way. Those who have viewed only the data see it differently. You must face the possibility that you will never discover truth because it is beyond your reach. You must ask yourselves, are we so confident in 1989 that we must override the venality of the verdict the jury reached in 1983.

How's my time?

Two minutes. I will yield to questions. Ms. Williams was going to address Article XVI, but she has yielded that time to me and, frankly, I don't think it warrants being addressed.

Is there a question?

The CHAIRMAN. Are there questions by the committee?

[No response.]

If not, thank you very much, Mr. Anderson. We appreciate that statement very much.

CONCLUDING STATEMENT BY THE CHAIRMAN

I have a short statement to read here which will lay out some of the actions from here on, and let me just go through that quickly.

I want to first compliment the House managers and the House counsel and their staff for the professional way they presented the case; also compliment Respondent's counsel and staff and Respondent for the professional way they presented the case; and, of course, our own committee staff and counsel.

IN RE: TESTIMONY OF WILLIAM A. BORDERS, JR.

I think we now have completed the taking of testimony and evidence submitted by the parties. The record will remain open for the purpose of receiving the testimony of William A. Borders, Jr., against whom civil enforcement proceedings are being brought.

AUTHORITY OF THE CHAIR AND VICE CHAIR TO RULE ON POST-TRIAL MATTERS

Further, the committee has delegated to the chairman and vice chairman the authority to rule on documentary and other inciden-

tal matters which may arise after the conclusion of the proceedings this evening.

POST-TRIAL FILINGS REQUESTED OF THE PARTIES AND SCHEDULE OF THE PROCEEDINGS

In addition to a certified copy of the transcript of these proceedings and testimony taken herein, the committee is authorized, pursuant to Senate Resolution 38, to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

The parties are requested to file on or before August 17th, two weeks from today, a statement which, for each material in the case contains that party's view, annotated to the daily transcripts and exhibits in the proceeding, first, what facts are undisputed, and, second, what evidence supports their position with respect to the disputed facts. We will print each of the parties' statements in the record of our proceedings, so that the full Senate will have the benefit of them.

The committee anticipates that the evidentiary record will be submitted to the full Senate shortly after the Senate returns from its August recess and that its report will be submitted to the Senate by the middle of September.

The committee will next meet on September 7th to confer regarding its submission to the Senate and any other pending matters.

The House managers shall file their brief to the Senate by September 20th; the Respondent shall file his brief by September 27th. Although the interval between the two briefs is short, the Respondent is familiar with the House's case and will have had for more than a month the statement of facts that the House will have submitted to the committee on August 17th.

We anticipate these impeachment proceedings will be brought before the Senate at some time during the first 3 weeks of October. The parties should be prepared to proceed by October 2nd. We will, of course, advise the parties of both the schedule for those proceedings and the manner in which they will be conducted as soon as those determinations have been made.

As far as I am aware, that concludes all the items that we need to make decisions on this evening. Is there any other matter, Mr. Anderson?

Mr. ANDERSON. Mr. Chairman, a minor thing. I am remiss in not putting in a written request, but I will just ask for it. Could both parties be supplied, with the exception of the confidential ones, with a set of the videotapes that went to the Senate? It may be—I am sure that it will be—that in certain circumstances we may want to isolate places where people—we would ask Senators to look at, if nothing else, at least this. But in terms of citing it, frankly, I would like it also for my library, but let's not get into that. Since it was by mandate of the Senate that this record be on videotape, could we have a copy of the videotape record?

The CHAIRMAN. Let us make some inquiries with the Senate and we will certainly advise counsel of the response to that. I am not in a position to this evening.

Representative Bryant, did you have a question?

Mr. BRYANT. We wanted to seek clarification, the House did, with regard to the possibility that William Borders might relent and testify, a clarification with regards to what our role would be. We would hope to be allowed to have a representative present to cross-examine him, in the event he testifies.

The CHAIRMAN. If he determines to testify and we take testimony, we will advise counsel both for the House, the House managers and counsel for Respondent and be sure that they are present so they can participate in questioning the witness.

If there is no other item that needs to be resolved, we very much appreciate the long hours that everybody has put into this effort and we will recess and adjourn the trial at this time, and the committee will meet again on the 7th of September.

[Whereupon, at 10:05 p.m., the committee was adjourned, to reconvene subject to call of the Chair.]

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

TUESDAY, AUGUST 22, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 10:09 a.m., in Room SH-216, Hart Senate Office Building, Hon. Arlen Specter, vice chairman of the committee, presiding.

Present: Senator Specter.

House Managers present: Representative Gekas.

Counsel present: Terence Anderson, counsel for Judge Hastings; Robert S. Catz, counsel for Judge Hastings; Alan I. Baron, special counsel, House Impeachment Committee; Michael Davidson, Senate Legal Counsel; Elaine Stone, counsel, Senate Impeachment Trial Committee; Mark Klugheit, counsel, Senate Impeachment Trial Committee; and Michael Rozier, counsel for Mr. Borders.

Staff present: Anthony Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; and Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The VICE CHAIRMAN [presiding]. The committee will commence this proceeding, which has as its purpose to hear the testimony of Mr. William A. Borders, Jr.

The committee has heard Mr. Borders briefly on July 24 and July 27, and pursuant to those appearances, the committee, as authorized by resolution of the Senate, has sought an order from the United States District Court for the District of Columbia to compel the testimony of Mr. Borders, and Mr. Borders is here today. And as the record should show, the committee has authorized this proceeding with any one Senator presiding, and we will proceed at this time.

I note Congressman Gekas has risen. Congressman Gekas, you are recognized.

Mr. GEKAS. Yes, Senator Specter, to allow the record to indicate that the managers on the part of the House of Representatives are present, along with their counsel.

The VICE CHAIRMAN. The record will so show, and the record will also show the presence of Professor Anderson, counsel for the respondent, Judge Hastings.

Mr. Borders, would you step forward, please?

May the record show that Mr. Borders is accompanied by counsel, Mr. Rozier, who has appeared with him in the past.

APPEARANCE OF WILLIAM A. BORDERS, JR.

Mr. BORDERS. May the record also show that my other attorney, attorney Marvin Arrington, is engaged in trial; that is why he is not here.

The VICE CHAIRMAN. Thank you very much, Mr. Borders. The record will contain that notation.

Mr. Borders, you have previously been sworn on your appearance before the committee; do you understand that you are under oath at the present time?

Mr. BORDERS. Yes, I do, Senator.

The VICE CHAIRMAN. And there has been an immunity order issued which provides immunity for the testimony which you will provide before this tribunal; are you aware of that proceeding and the immunity which has been granted by the United States District Court for the District of Columbia on your behalf?

Mr. BORDERS. I am aware of it, Senator. I have not seen the order, but when I was before Judge Revercombe, he stated that he was going to sign an order saying that.

The VICE CHAIRMAN. Well, on the recommendation of counsel, just so the record will be totally complete, Mr. Borders——

Mr. BORDERS. I'm not contesting it, Senator; I was just stating for the record.

The VICE CHAIRMAN. All right. Well, so the record will be complete, on the recommendation of counsel—it is nice to have counsel even if you are a lawyer; you and I are both lawyers, Mr. Borders, and we both——

Mr. BORDERS. Not anymore, Senator. You are a lawyer; I am not.

The VICE CHAIRMAN. Well, all right. We won't get into the distinction as to who is a lawyer and who is a member of the Bar, et cetera.

But let me make available for you the order filed on June 27th, Miscellaneous Number 89-129, from the United States District Court for the District of Columbia, which is the order granting immunity, and a copy of the order of the District Court for August 17, 1989, directing your appearance and your testimony.

Mr. BORDERS. Thank you, Senator.

Your indulgence for a moment, Senator. [Perusing document.]

The VICE CHAIRMAN. Yes.

Mr. BORDERS. Thank you, Senator.

The VICE CHAIRMAN. Mr. Borders, in 1981, did you ever meet with an individual who represented himself to be Mr. Frank Romano?

Mr. BORDERS. May I address the Senator at this time?

The VICE CHAIRMAN. You may.

Mr. BORDERS. Senator, when I was here on July 27th, I read a statement. I'd like that statement to be incorporated and only add to that that I further respectfully refuse to answer on the grounds that there is no quorum present at this time in terms of the Senate committee.

The VICE CHAIRMAN. Well, Mr. Borders, whatever statement you have to make, I would request that you make it in full. I do not think it is advisable for purposes of this proceeding to have any incorporation because we are going to proceed according to the book

precisely here, because as you will note from the order, the District Court has directed your answers, and in the absence of answers, your forthwith appearance before the District Court. And the court is available at 1:30 this afternoon to proceed with the hearing, and it would be the expectation of this committee that on a rule to show cause why you should not be held in contempt that it would be the effort of this committee to have you cited for contempt and to have you incarcerated—that is, put in jail—this afternoon under a civil contempt proceeding to compel your answers to the questions which this committee has asked you in the past and which the Committee will ask you this morning.

So I don't want to make any shortcuts on the procedure. Whatever you have to say, please state it in full.

Mr. ROZIER. One moment, please.

Mr. BORDERS. Your indulgence for a moment, Senator. [Conferring with counsel.]

May I proceed, Senator?

The VICE CHAIRMAN. Yes, please do, Mr. Borders.

You have a question pending before you at the moment, which is: Did you ever meet an individual on or about 1981, with that individual representing himself to be Mr. Frank Romano?

Mr. BORDERS. Senator Specter, not to encumber this Committee, but I will read a statement upon your request.

I want to take this opportunity prior to any questions from the United States Senate Impeachment Trial Committee on the Articles against Judge Alcee L. Hastings to clearly set forth my position with respect to the same.

As the public record shows, I have been indicted, tried, convicted and sentenced to five years in a correctional facility and have been fined a substantial amount of money. I have paid whatever fines were levied against me, returned whatever moneys that were allegedly paid to me, and have served not less than 33 months at the Allenwood Federal Correctional Camp.

Moreover, I have been on parole for an additional 27 months, and on May 22, 1988, I was successfully released from parole.

As if this were not enough, I have been disbarred by the District of Columbia Court of Appeals, have lost my form of livelihood as an attorney. Through these various proceedings, I have been the subject of inequitable harassing and somewhat contemptible efforts to have me waive my Constitutional and personal convictions.

This statement that I am reading has already been—and not to belabor the point, because some things have been remedied in terms of you, Senator, have stated there are no longer multiple offenses; there is one offense, and I have made that statement in there. So I will incorporate that statement as a part of the record.

That will be my answer to all questions.

Also, Senator, I'd like to file to show some of the things that have happened to me, although they are not all-inclusive—there is a summary fact sheet that I filed of papers which contain 13 facts that happened to me. I would like them to be incorporated as part of my answer, and rather than belabor it, I will file it and make it a part of my answer, also.

The VICE CHAIRMAN. Well, you are trying to extract them now from the file. Would you please produce them? The committee would like to see them; I would like to see them.

Mr. BORDERS. Yes, sir. I think your counsel has a copy in my motion before the court. There are 13 facts. I think he has a copy of that.

The VICE CHAIRMAN. Well, it may be most expeditious for you to give me the ones you are referring to although counsel is now looking for our copy as well.

Mr. BORDERS. Thank you, Senator. [Handing document.] Could you have a copy of that made so I could have a copy back?

The VICE CHAIRMAN. We'll return it to you, Mr. Borders.

Mr. BORDERS. OK.

The VICE CHAIRMAN. The fact sheet which you have made available, Mr. Borders recites Fact 1:

Borders filed a lawsuit against President Reagan for attempting to remove him from the Judicial Nominating Committee; Fact 2——

Mr. BORDERS. Yes, that's the first fact. There are 13 facts, Senator.

The VICE CHAIRMAN [reading and continuing]:

Borders was arrested and charged with Federal crimes; Fact 3—

Mr. BORDERS. Yes, yes. It shows that when I was arrested, although I was a property owner and everything else, most people are put on personal bond; I had to pay a monetary bond, which is unusual in that sense.

The VICE CHAIRMAN [reading]:

Fact 3. Borders, tried and convicted, received five years.

Mr. BORDERS. Yes, sir. In that one, it shows that I received the time, and that I was convicted of a two-man conspiracy, and the other individual was found not guilty on a two-man conspiracy.

The VICE CHAIRMAN [reading]:

Fact 4. During the appellate process, Borders was subpoenaed to testify before the appeal in his criminal case was decided.

Mr. BORDERS. Yes. As the Senator knows, as a former prosecutor, the majority of the times, when a person has a case on appeal, they wait until the case on appeal is over before they subpoena someone, and then in fact not incarcerate him while his appeal is going forward.

The VICE CHAIRMAN. As to that, Mr. Borders——

Mr. BORDERS. I'm not arguing it, Senator. I am just giving you a set of facts. I am not here to belabor that. Those are facts that happened. I am not here to debate that with you, Senator.

The VICE CHAIRMAN. Well, what the committee would like to do, Mr. Borders, is to secure your testimony. We understand your position. And what I am seeking to do now is to be sure that our record is complete so that we understand all of your contentions.

Mr. BORDERS. If the Senator would state—the statement I made on July 27th is the same statement—I am incorporating that by reference and adding the one additional—the only additional thing I am adding is the fact that this committee at this time lacks a quorum.

The VICE CHAIRMAN. Well, I'm going to deal with that in a moment.

Mr. BORDERS. I understand, Senator. That's just my position. I am quite sure you will deal with it.

The VICE CHAIRMAN. I just want the record to be complete. When you talk about Fact 4, about being subpoenaed to testify before the criminal case was concluded, that was during the grand jury proceedings, and you were held in contempt on a civil contempt proceeding at that time.

Fact 5. Judge Hastings was found not guilty.
Fact 6. Mr. Borders entered the Allenwood Federal Correctional Center.
Fact 7. Mr. Borders appeared before the Parole Commission Hearing.

Fact 8. The Bureau of Prison rules state that when an inmate is within the final two years of his sentence, he is eligible for furloughs.

And these continue, but I am just summarizing them.

Fact 9. Mr. Borders applied for a five-and-one-half-day furlough upon reaching one year.

Fact 10. Mr. Borders was escorted to Atlanta to testify before the Judiciary Committee that was investigating Judge Hastings.

Fact 11. Mr. Borders went back before the Parole Board.

Fact 12. Mr. Borders was granted a 30-day period in a halfway house.

Fact 13. Mr. Borders received a subpoena from the House Judiciary Subcommittee in connection with the pending investigation.

Mr. Borders, all of these factors have been considered, or there has been an opportunity for the presentation of these matters to the United States District Court for the District of Columbia. And the order which was entered on August the 17th reads as follows—being signed by Judge George H. Revercombe—the order:

Having considered the Senate Impeachment Trial Committee's application to enforce its subpoena of respondent William A. Borders, Jr., as well as Mr. Borders' opposition to the application, the court finds that the committee is entitled to enforce its subpoena and to receive Mr. Borders' testimony.

So I think it is a fair reading that these issues were raised before the District Court before this order was issued. I do not know that they were all raised, but they either were raised or there was an opportunity for them to be raised.

Mr. BORDERS. Yes, sir.

The VICE CHAIRMAN. The order then goes on:

Therefore it is ordered that Mr. Borders shall appear before the Impeachment Trial Committee at times to be designed by the committee and shall respond forthwith to the questions by the committee and the parties, and shall testify fully and completely regarding his knowledge of all events relevant to the Senate trial of the Articles of Impeachment against Judge Hastings.

It is further ordered that if Mr. Borders fails to appear before the committee, or fails to answer the questions propounded to him, he shall appear forthwith before the court to show cause why he should not be held in contempt of this court and why civil sanctions should not be imposed to compel obedience to this court's order.

Dated 8-17-89; the signature purports to be that of George H. Revercombe, United States District Judge.

As I have said, Mr. Borders, the committee intends to pursue this order, and I am advised by counsel, Mr. Davidson, that the court has reserved a time of 1:30 this afternoon to proceed.

And I repeat, the committee has no interest other than to secure your testimony, and we do not have any interest in having you put in jail, but that is the established procedure on the civil side if somebody refuses to testify before the committee after extensive procedures have been undertaken, where there has been a grant of immunity, where a person has been called before the committee, where the person refuses to testify, where the committee then goes back before the court and makes a recitation and proof of those facts, and the court then issues an order, and the final court proceeding or another court proceeding is to have the rule to show cause this afternoon, where incarceration would be provided.

You are, if not a member of the bar, you have been a member of the bar, you are a lawyer, you are represented by counsel, so I know you understand all that, but I think it is important nonetheless to repeat it in that somewhat abbreviated form for the record.

Mr. BORDERS. Thank you, Senator.

The VICE CHAIRMAN. Mr. Borders, you have raised the question as to the propriety, legality, of this committee proceeding with only a single member present, and when the committee had its last day of testimony on August 3—and the Senate has been in recess and is in recess at the present time—the committee adopted a rule which, in accordance with Senate procedure, was printed in the Congressional Record on August 3 at page S10013, and it recites as follows:

> Rule 3. Quorum for taking testimony of William A. Borders, Jr. during recess. During the recess or adjournment of the Senate, one member of the committee shall constitute a quorum for the purpose of examination of Mr. William A. Borders, Jr., at which sworn testimony is heard and evidence taken.

That is followed by a resolution which the Senate proceeded on to compel your testimony.

It is my understanding that there is no other Senator from the committee in town today. I was notified about this issue on Thursday and had independent plans, as a matter of fact, to be here today, but would have been in any event so that somebody would be present to preside at this hearing.

Mr. Borders, you have made reference to my statement that there were no longer multiple offenses, but only one offense. Without taking the time to dig through the record, I do not believe that I said that.

I had said to you at an earlier proceeding, I believe on July 24th, that there could be multiple offenses. There are two proceedings for contempt. There is civil contempt, which is jailing to compel a person to answer a question. It is said, commonly, that the person has the key to the jail in his pocket because he can get out of jail any time he will comply with the court order and testify.

There is a separate proceeding which is called criminal contempt. Criminal contempt is a proceeding which is ordered, requested, by the Senate if there is not an answer given before the Senate, and it is then referred to the Department of Justice, to the United States Attorney. That is a criminal charge where a person can be incarcerated for a period of time as provided by law, and it may be that if I ask you questions, it is only one offense, or it may be that if I ask you ten questions, it is ten separate offenses—I do not believe that it has been decided with certainty as to that circumstance. And what I intend to do at the moment is to ask you ten questions so that the record may be complete, because this may be the last time that you will appear before this committee. Personally, I hope it is not. My own view and the committee's view is that we would hope that you would reconsider, and at some point present testimony before this committee, because our sole interest is not in putting you in jail or not imposing any additional penalties on you, not taking any harsh action toward you, but only in getting all of the evidence that we can as to what happened in this matter which we are considering, the matter involving Judge Alcee Hastings. That is what we want to determine. And pursuant to that—[conferring with counsel]—on the advice of counsel, I formally rule on behalf of this committee that your objection on the absence of a quorum is overruled, and I am not going to proceed, Mr. Borders, to ask you——

Mr. BORDERS. May I ask the chairman a question?

The VICE CHAIRMAN. Sure.

Mr. BORDERS. If, in fact, I've stated I'm not going to answer any questions based on the grounds that I state, then why ten questions rather than three?

The VICE CHAIRMAN. Because you may be guilty of ten separate criminal contempt charges, Mr. Borders

Mr. BORDERS. I just wanted to know the purpose of it.

The VICE CHAIRMAN. That is——

Mr. BORDERS. As I understand it, your purpose is, if, in fact, I can be charged with multiple offenses, you want ten rather than one.

The VICE CHAIRMAN. Well, no, I don't want ten. I'm going to let somebody else decide that. This is going to go to the Department of Justice, not going to be decided by the Senate. My sole purpose is in creating a record which will give sufficient latitude for anybody who is reviewing this matter to make any decisions which they deem appropriate.

I'm not going to ask you 20 questions. I'm not going to ask you 60 questions or 100 questions. I think that would be excessive.

Mr. BORDERS. Ten would not be?

The VICE CHAIRMAN. Well, ten might be, yes.

Mr. BORDERS. Thank you, sir.

The VICE CHAIRMAN. Or ten might not be. When we're dealing with the integrity of the Federal judiciary, perhaps no number of questions would be excessive, and we're dealing with a man's opportunity to continue on the Federal bench. Perhaps no number of questions would be excessive.

If, in fact, you participated in a scheme to bribe a Federal judge, perhaps no length of time is excessive, and you participated in a scam where the judge was not involved, perhaps no period of time would be excessive.

That's from a point of view of the administration of criminal justice, and from Judge Hastings' point of view, his career is on the line, and if you're in a position to exonerate him, you ought to do it, and from the public's point of view, if you're in a position to give incriminating evidence, you ought to do that. But what this committee is interested in doing is obtaining your testimony as I've said.

But I do not respond well to what may be excessive or what may not be excessive. If my opinion were asked, I think it's excessive that you don't answer this committee's questions, Mr. Borders.

Question number one. When did you and Judge Hastings first discuss the Romano bribery arrangements if, in fact, you discussed them at all?

Mr. BORDERS. Most respectfully, Senator, I incorporate my answer of July the 27th and my answer today on that, and to all other questions my answer would be the same.

The VICE CHAIRMAN. Question number two. What did you do with the $25,000 you got from a man you thought was Frank Romano on September 19, 1981?

Mr. BORDERS. Most respectfully, Senator, my answer is the same, and I incorporate both answers of July 27th and today's answer.

The VICE CHAIRMAN. Question number three. Was your phone call with Judge Hastings on October 5, 1981, in any kind of a code?

Mr. BORDERS. Most respectfully, Senator, my answer would be the same incorporating both answers.

The VICE CHAIRMAN. Question number four. Did you arrange for Judge Hastings to have dinner at the Fontainebleu Hotel in Miami on September 16, 1981?

Mr. BORDERS. Most respectfully, Senator, I incorporate both answers and my answer is the same.

The VICE CHAIRMAN. Question number five. Did you learn that an order modifying the Romano forfeiture was to be entered by Judge Hastings?

Mr. BORDERS. Most respectfully, Senator, I incorporate my answer of July 27th and my answer today.

The VICE CHAIRMAN. Question number six. Did you give any of the $25,000 you got on September 19, 1981, to Judge Hastings?

Mr. BORDERS. Most respectfully, Senator, I incorporate my answer of July 27th and the answer today.

The VICE CHAIRMAN. Question number seven. Were you involved in any bribe arrangement with Santos Trafficante?

Mr. BORDERS. Most respectfully, Senator, my answer is the same. I incorporate by reference my July 27th answer and today's answer as being a complete answer to all questions.

The VICE CHAIRMAN. Question number eight. Did you ever meet with Judge Hastings at the Miami International Airport for the purpose of carrying on a bribery arrangement as to the *Romano* case?

Mr. BORDERS. Most respectfully, Senator, I incorporate my answer of July 27th and my answer today as being a complete answer for the record on all questions you've asked.

The VICE CHAIRMAN. Question number nine, did you ever meet with Judge Hastings in Washington, DC for the purpose of carrying on a conspiracy plot on bribery in connection with the *Romano* case?

Mr. BORDERS. Most respectfully, Senator, my answer would be the same incorporating my answer of July 27th and the answer today.

The VICE CHAIRMAN. Question number ten. Were you involved in any effort or representation to fix the case involving Santos Trafficante in the United States District Court for the Southern District of Florida?

Mr. BORDERS. Most respectfully, Senator, my answer would be the same, incorporate the July 27th answer and the answer today.

The VICE CHAIRMAN. Those are all the questions which the committee is going to propound at this time, Mr. Border.

Mr. BORDERS. Thank you, Senator.

The VICE CHAIRMAN. Do counsel have anything to say in this proceeding?

Mr. ANDERSON. No, Mr. Chairman, counsel for Judge Hastings does not.

Mr. BARON. No, sir.

The VICE CHAIRMAN. The hearing is concluded.

Mr. BORDERS. May I ask one question before you conclude.

The VICE CHAIRMAN. The hearing is reopened.

You may, Mr. Borders.

Mr. BORDERS. When I was before Judge Revercomb, he said he may not be the judge, and I understand it's been set up for 1:30. I'd like to know who I appear before. I don't know.

The VICE CHAIRMAN. Yes, I think that's a fair question, and I have that information for you. Judge Thomas Jackson has set the time at 1:30.

Mr. BORDERS. Before him?

The VICE CHAIRMAN. Before him, and it would be our expectation that counsel for the committee will be present at that time and that you will be present at that time.

Mr. BORDERS. I will be present.

The VICE CHAIRMAN. Fine. Thank you very much.

That concludes our hearing.

[Whereupon, at 10:42 a.m., the committee adjourned subject to the call of the Chair.]

[Summary fact sheet follows:]

EXHIBIT H

WILLIAM A. BORDERS, JR.—SUMMARY FACT SHEET

FACT 1. Borders filed a lawsuit against President Ronald Reagan for attempting to remove him from the Judicial Nominating Committee. (Borders prevailed at the trial level and the Government appealed).

FACT 2. Borders was arrested and charged with Federal crimes and the U.S. Magistrate refused to release him on personal bond although at the time he was a lawyer, property owner and met all requirements for personal bond under the Bail Reform Act. (Borders paid $2,500 to a bondsman as a fee to be released on a $25,000 surety bond set by the Magristrate after spending a night in DC Jail). After the arrest, the Justice Department moved to dismiss Borders' lawsuit, using his arrest as grounds for dismissal.

FACT 3. Borders, tried and convicted, received five (5) years to run concurrent with other charges in the indictment. However, he also received a $35,000 fine, which did not run concurrent with the five (5) year sentence. If both had been concurrent, Borders would have received a $10,000 fine.

FACT 4. During the Appellate process, Borders was subpoenaed to testify before the appeal in his criminal case was decided. In a somewhat unusual situation, Borders was held in contempt for refusing to testify before the grand jury and was sentenced to prison until the expiration of the grand jury (served 40 days), while his case was still in the appellate process.

FACT 5. Judge Alcee Hastings was found not guilty of alleged two-person conspiracy (one jury found Borders guilty of a two-person conspiracy and one jury found Hastings not guilty of a two-person conspiracy.)

FACT 6. Borders entered Allenwood Federal Correctional Center after exhausting his appeals. (The Appellate process in his case, exceedingly short, in comparison with all studies of the Criminal Justice System).

FACT 7. Borders appears for Parole Commission Hearing Examiners pursuant to the parole commission's rules and regulations. Two hearing examiners recommended that borders serve two years of his five year sentence. The Justice Department wrote a letter to the Parole Commissioner and Borders is given an unprecedented second hearing (the hearing was unprecedented because there were no new facts). Two more hearing examiners recommended two years. Since Borders' case was in a special category by the parole commission's internal rules, it had to be heard by the full commission. Prior to that hearing, one of the Parole Commissioners, *i.e.*, a Regional Commissioner, recommended two years. Upon the hearing of the full commission, the recommendation was changed and the commission decided that Borders should serve three (3) years.

FACT 8. The Bureau of Prison rules state that when an inmate is within the final two years of his sentence he is eligible for furloughs, i.e., one day a month until he is within 18 months of his release date and when he is within 18 months, he is allowed two (2) days and upon reaching a year, he is allowed to go home for five and one-half (5.5) days. This varies from institution to institution. Borders was a model inmate and applied for the furlough program. He was accepted by the institution

and went on three fifteen hour furloughs and was eligible for a two-day furlough in the community upon reaching 18 months. Just prior to going on that furlough, after being granted said furlough, the regional office of the Bureau of Prisons, on the information and belief from statements made by Borders' Unit Manager, sent a telex stating that Borders should receive no more furloughs and that an opinion would follow. Said opinion was never produced.

FACT 9. Borders applied for a five and one-half day furlough upon reaching one year and also for a Prison Fellowship Seminar. Borders was accepted by Prison Fellowship for a two-week seminar and his Unit Manager authorized him to go on the two-week seminar and a five and one-half days seminar. Both were rejected by the regional office.

FACT 10. Borders was escorted to Atlanta to testify before the Judiciary Committee that was investigating Judge Alcee Hastings by his Unit Manager and after refusing to testify, based on his Fifth Amendment rights, he was left at the Atlanta Federal Prison Camp for eleven (11) days. He was escorted by a Unit Manager from the Atlanta Camp back to Allenwood. (Normally, under Bureau of Prison regulations, a model prisoner is given a furlough transfer to the institution).

FACT 11. Borders went back before the parole board and received a three (3) month reduction based on his being a model prisoner and that he had paid the $35,000 fine and the $25,000 allegedly received by Borders from an undercover agent.

FACT 12. Borders was granted a 30-day period in a halfway house although most individuals with his exemplary record and time that had already been served, were receiving three to six months. With the six month period being the exception at Allenwood, the norm being four months. After receiving the 30 days, a Bureau of Prison directive came down to extend individual's time in the community via the halfway house because of prison over-crowdedness. Most inmates receive extensions of their halfway house time for a month or more. Borders time in the community at a halfway house was extended 15 days. (That gave Borders a total of 45 days at a halfway house).

FACT 13. Borders received a supoena from the House Judiciary Sub-Committee in connection with the pending investigation. When he appeared before Chief Counsel of the Committee, though his counsel, attorney Marvin Arrington, he refused to testify based on the rules and guidelines that had been given to him by the Parole Commission. The Chief Counsel then recessed the Hearing and upon reconvening the Hearing the same morning, said Chief Counsel handed Attorney Marvin Arrington a letter addressed to Marvin Arrington at his Atlanta address, that on information and belief, was faxed to the Chief Counsel's staff upon their request stating in effect, that Borders' lawyer had made the wrong interpretation of the rule in connection with his testimony. The Hearing was then recessed and later Borders was contacted by his parole officer, asking him to come in so that his conditions and rules of release could be changed. Upon reading the change dictated by the Parole Commission, it was changed so that it would conform to what the Chief Counsel wanted Mr. Borders to do.

William A. Borders, Jr.

ONE HUNDRED FIRST CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

RECEIVED AUG 28 1989

August 28, 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

The House Managers in the Impeachment Inquiry of Judge Alcee L. Hastings request that the Senate Trial Committee include in the trial record House Exhibits 23 and 222. Counsel for Respondent has no objection to the admission of the exhibits.

Exhibit 23 consists of two documents, one dated September 11, 1981, and a second, dated October 6, 1981. The parties agree that the September 11 letter represents the original plea agreement between William Dredge and the United States Attorney's Office. The letter dated October 6, does not differ in any substantive way from the September 11 document and is the version of the plea agreement filed with the United State District Court for the District of Maryland and placed under seal by Judge Kaufman.

Exhibit 222 was submitted by the custodian of records for Southern Bell and provides subscriber information for the telephone to which the number 374-9650 (305) was assigned in 1981.

Sincerely,

John Bryant

John Bryant
House Managers

cc: Terence Anderson
Michael Davidson

2547-3000

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United States Senate

IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-B02D
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
TENTH ORDER

On August 3, 1989, upon the completion of the taking of testimony and evidence submitted by the parties, we stated that the Committee had delegated to the Chairman and Vice Chairman the authority to rule on documentary and other incidental matters which might arise after proceedings of that day were concluded. This order is entered pursuant to that authority.

The following exhibits are hereby admitted, without objection, into evidence:

(1) House Ex. 23, consisting of two letters, dated September 11 and October 6, 1981. The first represents the original plea agreement between William Dredge and the United States Attorney for the District of Maryland; the second represents the version of that agreement that was filed with and placed under seal by the United States District Court for the District of Maryland;

(2) House Ex. 222, consisting of subscriber information for phone number (305) 374-9650; and

(3) Respondent's Exs. 27A, 28A, 29A, 30A, 31A, 32A, 33A, 34A, and 35A, consisting of selected portions of William Borders' office telephone logs.

Jeff Bingaman, Chairman

Arlen Specter, Vice Chairman

August [illegible], 1989